



**BERKELEY CITY COUNCIL AGENDA & RULES COMMITTEE
SPECIAL MEETING**

TUESDAY, SEPTEMBER 8, 2020

2:30 P.M.

Committee Members:

Mayor Jesse Arreguin, Councilmembers Sophie Hahn and Susan Wengraf

Alternate: Councilmember Ben Bartlett

PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH VIDEOCONFERENCE AND TELECONFERENCE

Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, this meeting of the City Council Agenda & Rules Committee will be conducted exclusively through teleconference and Zoom videoconference. Please be advised that pursuant to the Executive Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, there will not be a physical meeting location available.

To access the meeting remotely using the internet: Join from a PC, Mac, iPad, iPhone, or Android device: Use URL - <https://us02web.zoom.us/j/88170468287>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon on the screen.

To join by phone: Dial **1-669-900-9128** and Enter Meeting ID: **881 7046 8287**. If you wish to comment during the public comment portion of the agenda, press *9 and wait to be recognized by the Chair.

Written communications submitted by mail or e-mail to the Agenda & Rules Committee by 5:00 p.m. the Friday before the Committee meeting will be distributed to the members of the Committee in advance of the meeting and retained as part of the official record. City offices are currently closed and cannot accept written communications in person.

AGENDA

Roll Call

Public Comment

Review of Agendas

1. **Approval of Minutes: August 31, 2020**
2. **Review and Approve Draft Agendas:**
 - a. 9/22/20 – 6:00 p.m. Regular City Council Meeting
3. **Selection of Item for the Berkeley Considers Online Engagement Portal**
4. **Adjournments In Memory**

Scheduling

5. **Council Worksessions Schedule**
6. **Council Referrals to Agenda Committee for Scheduling**
7. **Land Use Calendar**

Referred Items for Review

8. **Discussion Regarding Impact of COVID-19 (novel coronavirus) on Meetings of Legislative Bodies**
9. **Referral Response: Expanding community engagement within work to address Climate Impacts**
From: City Manager
Referred: July 21, 2020
Due: January 22, 2021
Recommendation:
 1. Refer to the City Manager to continually advance engagement around community-driven, equitable climate solutions, and to seek external resources to enable increased community engagement of impacted communities around equitable climate solutions; and
 2. Refer to the Agenda Committee a revision to the Council Rules of Procedures to update the Environmental Sustainability section of City Council items and staff reports as “Environmental Sustainability and Climate Impacts.”**Financial Implications:** See report
Contact: Jordan Klein, Planning and Development, (510) 981-7400

Unscheduled Items

These items are not scheduled for discussion or action at this meeting. The Committee may schedule these items to the Action Calendar of a future Committee meeting.

- 10. Commission Reorganization for Post-COVID19 Budget Recovery**
From: Councilmember Droste (Author), Councilmember Robinson (Co-Sponsor), Councilmember Kesarwani (Co-Sponsor)
Referred: June 15, 2020
Due: November 30, 2020
Recommendation: 1. Reorganize existing commissions with the goal of achieving 20 total commissions; 2. Reorganize existing commissions within various departments to ensure that no single department is responsible for more than five commissions; 3. Reorganize commissions within the Public Works Department to ensure Public Works oversees no more than three commissions; 4. Refer to the City Manager and every policy committee to agendaize at the next meeting available to discuss commissions that are in their purview and make recommendations to the full Council on how to reorganize and address the various policy areas. Commission members should be notified and chairs should be invited to participate. Policy committee members are encouraged to consider the renaming of some commissions in order to ensure that all policy areas are addressed.
Financial Implications: See report
Contact: Lori Droste, Councilmember, District 8, (510) 981-7180
- 11. Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12 (Item contains supplemental material)**
From: Fair Campaign Practices Commission
Referred: July 28, 2020
Due: January 29, 2021
Recommendation: Conduct a public hearing and upon conclusion, adopt first reading of an ordinance amending the Berkeley Election Reform Act, Berkeley Municipal Code Chapter 2.12, to prohibit Officeholder Accounts (See Section 18531.62. Elected State Officeholder Bank Accounts, Regulations of the Fair Political Practices Commission).
Financial Implications: None
Contact: Sam Harvey, Commission Secretary, (510) 981-6950

Unscheduled Items

12. Relinquishments and grants from Councilmembers' office budgets

From: Open Government Commission

Referred: August 31, 2020

Due: February 15, 2021

Recommendation: Adopt a Resolution creating a temporary advisory committee consisting of three (3) members each of the City Council and the Open Government Commission ("OGC") to enable discussion between the Council and the OGC to make recommendations governing relinquishments and grants from Councilmembers' office budgets.

Financial Implications: None

Contact: Sam Harvey, Commission Secretary, (510) 981-6950

Items for Future Agendas

- Discussion of items to be added to future agendas

Adjournment – Next Meeting Tuesday, September 29, 2020

Additional items may be added to the draft agenda per Council Rules of Procedure.

Rules of Procedure as adopted by Council resolution, Article III, C3c - Agenda - Submission of Time Critical Items

Time Critical Items. A Time Critical item is defined as a matter that is considered urgent by the sponsor and that has a deadline for action that is prior to the next meeting of the Council and for which a report prepared by the City Manager, Auditor, Mayor or council member is received by the City Clerk after established deadlines and is not included on the Agenda Committee's published agenda.

If the Agenda Committee finds the matter to meet the definition of Time Critical, the Agenda Committee may place the matter on the Agenda on either the Consent or Action Calendar.

The City Clerk shall not accept any item past the adjournment of the Agenda Committee meeting for which the agenda that the item is requested to appear on has been approved.

Written communications addressed to the Agenda Committee and submitted to the City Clerk Department by 5:00 p.m. the Friday before the Committee meeting, will be distributed to the Committee prior to the meeting.

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953 and applicable Executive Orders as issued by the Governor that are currently in effect. Members of the City Council who are not members of the standing committee may attend a standing committee meeting even if it results in a quorum being present, provided that the non-members only act as observers and do not participate in the meeting. If only one member of the Council who is not a member of the committee is present for the meeting, the member may participate in the meeting because less than a quorum of the full Council is present. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, (510) 981-6900.



COMMUNICATION ACCESS INFORMATION:

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at (510) 981-6418 (V) or (510) 981-6347 (TDD) at least three business days before the meeting date.

* * *

I hereby certify that the agenda for this special meeting of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on September 3, 2020.

A handwritten signature in black ink, appearing to read "Mark Numainville".

Mark Numainville, City Clerk

Communications

Communications submitted to City Council Policy Committees are on file in the City Clerk Department at 2180 Milvia Street, 1st Floor, Berkeley, CA.

**BERKELEY CITY COUNCIL AGENDA & RULES COMMITTEE
SPECIAL MEETING MINUTES**

MONDAY, AUGUST 31, 2020

2:30 P.M.

Committee Members:

Mayor Jesse Arreguin, Councilmembers Sophie Hahn and Susan Wengraf

Alternate: Councilmember Ben Bartlett

PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH VIDEOCONFERENCE AND TELECONFERENCE

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To join by phone: Dial **1-669-900-9128** and Enter Meeting ID: **823 7333 6588**. If you wish to comment during the public comment portion of the agenda, press *9 and wait to be recognized by the Chair.

Written communications submitted by mail or e-mail to the Agenda & Rules Committee by 5:00 p.m. the Friday before the Committee meeting will be distributed to the members of the Committee in advance of the meeting and retained as part of the official record. City offices are currently closed and cannot accept written communications in person.

AGENDA

Roll Call: 2:30 p.m. All present.

Public Comment – 3 speakers.

Review of Agendas

1. Approval of Minutes: July 13, 2020

Action: M/S/C (Wengraf/Hahn) to approve the Minutes of 7/13/2020.

Vote: All Ayes.

2. Review and Approve Draft Agendas:

a. 9/15/20 – 6:00 p.m. Regular City Council Meeting

Action: M/S/C (Hahn/Wengraf) to approve the Agenda of the 9/15/2020 regular meeting with the revisions noted below.

- *Item Added: Traffic Safety Grant (City Manager)*
- *Item Added: Zero Waste Grant (City Manager)*
- *Item Added: Willard Park (Droste)*
- *Item Added: California Rebuilding Fund (Hahn)*
- *Item 21 Proposition 20 (Robinson) – Councilmember Bartlett added as a co-sponsor*
- *Item 26 LOCC Voting Delegates (City Manager) – moved to Consent Calendar*
- *Item 27 Sustainable Trips (CEAC) – moved to Consent Calendar*
- *Item 28 Council Relinquishments (OGC) – referred to Agenda & Rules Committee*
- *Item 29 Healthy Checkout (Harrison) – Scheduled to September 22, 2020*
- *Item 30 Fair Chance (Arreguin) – moved to Consent Calendar*
- *Item 31 Police Chief (Davila) – revised item submitted; scheduled for 9/15 Action Calendar*
- *Item 32 Vision 2025 (Davila) – referred to Health, Life Enrichment, Equity & Community Committee*
- *Item 33 Property Tax Measures (Bartlett) – referred to Budget & Finance Committee*
- *Item 34 Suffrage Proclamation (Harrison) – moved to Consent Calendar; Councilmembers Wengraf and Hahn added as co-sponsors*
- *Item 35 Proclamation for Kamala Harris (Hahn) – revised item submitted; moved to Consent Calendar; Mayor Arreguin added as a co-sponsor*
- *Item 36 Paid Internships (Robinson) – moved to Consent Calendar*

Vote: All Ayes.

Order of Items on Action Calendar

Item 22 Public Hearing

Item 23 Housing Report

Item 24 Contract 9274A

Item 25 Urgency Ordinance

Item 31 Police Chief

3. Selection of Item for the Berkeley Considers Online Engagement Portal

- None selected

4. Adjournments In Memory

- Dr. Elmer Grossman, Pediatrician and City Commissioner

Scheduling

5. Council Worksessions Schedule

- Undergrounding Task Force presentation scheduled for October 20.

6. Council Referrals to Agenda Committee for Scheduling

Action: M/S/C (Hahn/Arreguin) to take no action on Item 1 Short-Term Rentals.

Vote: All Ayes.

7. Land Use Calendar – received and filed

Referred Items for Review

8. Discussion Regarding Impact of COVID-19 (novel coronavirus) on Meetings of Legislative Bodies

Action: 2 speakers. Update provided by City Manager. No action taken. Item will remain on the agenda for future updates.

9a. Compiling Commission Recommendations in a Reference Manual

From: Homeless Commission

Referred: June 29, 2020

Due: December 14, 2020

Recommendation: The Homeless Commission recommends that Council refer to staff to develop a procedure for staff secretaries to all City of Berkeley commissions to compile all commission recommendations, whether in report or letter form, in a binder. Such binder shall also track the outcomes of all commission recommendations including action taken by Council and subsequent implementation of Council action. One copy of the binder shall remain with the staff secretary; another copy of the binder shall be available as a resource in the City Clerk's office. The City Clerk shall index all subject matters of commission proposals so that there is cross-referencing of all subjects that commissions have addressed. This reference manual shall be available for use by commissions to share information, the Mayor and Council, staff and members of the public. The City Clerk shall also provide this information online.

Financial Implications: See report

Contact: Brittany Carnegie, Commission Secretary, (510) 981-5400

Referred Items for Review

9b. Companion Report: Compiling Commission Recommendations in a Reference Manual

From: City Manager

Referred: June 29, 2020

Due: December 14, 2020

Recommendation: Refer the commission recommendation to the City Manager to 1) consider the impacts on staffing levels, approved Strategic Plan projects, and existing baseline services in the context of the projected budget shortfall for FY 2021 and the hiring freeze currently in effect; and 2) work within existing resources to facilitate information sharing among commissions on items referred from the City Council.

Financial Implications: See report

Contact: Mark Numainville, City Clerk, (510) 981-6900; Brittany Carnegie, Commission Secretary, (510) 981-5400

Action: 3 speakers. M/S/C (Wengraf/Hahn) to send Items 9a and 9b to the City Council with a Qualified Positive Recommendation to adopt the staff item in 9b to explore potential short term solutions and recommend that the commission recommendation be reintroduced to Council after the COVID-19 emergency is lifted.

Vote: All Ayes.

Referred Items for Review

- 10. Amending Council Rules of Procedures such that items submitted by the Mayor or Councilmembers be placed directly on the City Council Agenda to allow the whole City Council to review and take action on the submitted item to ensure equity in the process**
From: Councilmember Davila (Author)
Referred: June 29, 2020
Due: December 14, 2020
Recommendation: Adopt a Resolution to amend Council Rules of Procedures Section C-1 and G-1 such that items submitted by the Mayor or Councilmembers be placed directly on the City Council agenda rather than beginning with submission to commissions or Council Policy Committees to ensure equity in the process.
Financial Implications: None
Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120
Action: 2 speakers. M/S/C (Arreguin/Wengraf) to send Item 10 to the City Council with a Negative Recommendation.
Vote: All Ayes.

- 11. Resolution to Incorporate the Practice of 1 Minute and 46 seconds of Mindfulness into City Council Meetings**
Referred: June 15, 2020
Due: November 30, 2020
From: Councilmember Davila (Author)
Recommendation: Adopt a resolution to amend the City Council Meeting Agendas and Council Rules of Procedures to include one minute and forty-six seconds of silence to adopt mindfulness into Council meetings to remember the loss of lives due to police violence.
Financial Implications: None
Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120
Action: 2 speakers. M/S/C (Wengraf/Arreguin) to send Item 11 to the City Council with a Qualified Positive Recommendation to observe one minute and forty-six seconds of silence at the September 22, 2020 regular meeting to remember the loss of lives due to police violence; and further remind Councilmembers that moments of reflection, recognition, or celebration are requested through the Mayor's office for inclusion on the ceremonial calendar.
Vote: All Ayes.

Unscheduled Items

These items are not scheduled for discussion or action at this meeting. The Committee may schedule these items to the Action Calendar of a future Committee meeting.

- 12. Commission Reorganization for Post-COVID19 Budget Recovery**
From: Councilmember Droste (Author), Councilmember Robinson (Co-Sponsor), Councilmember Kesarwani (Co-Sponsor)
Referred: June 15, 2020
Due: November 30, 2020
Recommendation: 1. Reorganize existing commissions with the goal of achieving 20 total commissions; 2. Reorganize existing commissions within various departments to ensure that no single department is responsible for more than five commissions; 3. Reorganize commissions within the Public Works Department to ensure Public Works oversees no more than three commissions; 4. Refer to the City Manager and every policy committee to agendaize at the next meeting available to discuss commissions that are in their purview and make recommendations to the full Council on how to reorganize and address the various policy areas. Commission members should be notified and chairs should be invited to participate. Policy committee members are encouraged to consider the renaming of some commissions in order to ensure that all policy areas are addressed.
Financial Implications: See report
Contact: Lori Droste, Councilmember, District 8, (510) 981-7180
Action: No action taken.
- 13. Referral Response: Expanding community engagement within work to address Climate Impacts**
From: City Manager
Referred: July 21, 2020
Due: January 22, 2021
Recommendation:
1. Refer to the City Manager to continually advance engagement around community-driven, equitable climate solutions, and to seek external resources to enable increased community engagement of impacted communities around equitable climate solutions; and
2. Refer to the Agenda Committee a revision to the Council Rules of Procedures to update the Environmental Sustainability section of City Council items and staff reports as "Environmental Sustainability and Climate Impacts."
Financial Implications: See report
Contact: Jordan Klein, Planning and Development, (510) 981-7400
Action: No action taken. Item scheduled for Action on the September 8, 2020 agenda.

14. Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12 *(Item contains supplemental material)*

From: Fair Campaign Practices Commission

Referred: July 28, 2020

Due: January 29, 2021

Recommendation: Conduct a public hearing and upon conclusion, adopt first reading of an ordinance amending the Berkeley Election Reform Act, Berkeley Municipal Code Chapter 2.12, to prohibit Officeholder Accounts (See Section 18531.62. Elected State Officeholder Bank Accounts, Regulations of the Fair Political Practices Commission).

Financial Implications: None

Contact: Sam Harvey, Commission Secretary, (510) 981-6950

Action: No action taken.

Items for Future Agendas

- **Discussion of items to be added to future agendas - none**

Adjournment

Action: M/S/C (Wengraf/Hahn) to adjourn the meeting.

Vote: All Ayes.

Adjourned at 4:27 p.m.

I hereby certify that the foregoing is a true and correct record of the meeting of the Agenda & Rules Committee held on August 31, 2020.

Mark Numainville
City Clerk

DRAFT AGENDA



BERKELEY CITY COUNCIL MEETING

Tuesday, September 22, 2020
6:00 PM

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI
DISTRICT 2 – CHERYL DAVILA
DISTRICT 3 – BEN BARTLETT
DISTRICT 4 – KATE HARRISON

DISTRICT 5 – SOPHIE HAHN
DISTRICT 6 – SUSAN WENGRAF
DISTRICT 7 – RIGEL ROBINSON
DISTRICT 8 – LORI DROSTE

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Live audio is available on KPFB Radio 89.3. Live captioned broadcasts of Council Meetings are available on Cable B-TV (Channel 33) and via internet accessible video stream at http://www.cityofberkeley.info/CalendarEventWebcastMain.aspx.

To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <<INSERT URL HERE>>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon by rolling over the bottom of the screen.

To join by phone: Dial 1-669-900-9128 and enter Meeting ID: <<INSERT MEETING ID HERE>>. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair.

To submit an e-mail comment during the meeting to be read aloud during public comment, email clerk@cityofberkeley.info with the Subject Line in this format: "PUBLIC COMMENT ITEM ##." Please observe a 150 word limit. Time limits on public comments will apply. Written comments will be entered into the public record.

Please be mindful that the teleconference will be recorded as any Council meeting is recorded, and all other rules of procedure and decorum will apply for Council meetings conducted by teleconference or videoconference.

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, (510) 981-6900. The City Council may take action related to any subject listed on the Agenda. Meetings will adjourn at 11:00 p.m. - any items outstanding at that time will be carried over to a date/time to be specified.

Preliminary Matters

Roll Call:

Ceremonial Matters: *In addition to those items listed on the agenda, the Mayor may add additional ceremonial matters.*

City Manager Comments: *The City Manager may make announcements or provide information to the City Council in the form of an oral report. The Council will not take action on such items but may request the City Manager place a report on a future agenda for discussion.*

Public Comment on Non-Agenda Matters: *Persons will be selected to address matters not on the Council agenda. If five or fewer persons wish to speak, each person selected will be allotted two minutes each. If more than five persons wish to speak, up to ten persons will be selected to address matters not on the Council agenda and each person selected will be allotted one minute each. The remainder of the speakers wishing to address the Council on non-agenda items will be heard at the end of the agenda.*

Consent Calendar

The Council will first determine whether to move items on the agenda for "Action" or "Information" to the "Consent Calendar", or move "Consent Calendar" items to "Action." Three members of the City Council must agree to pull an item from the Consent Calendar for it to move to Action. Items that remain on the "Consent Calendar" are voted on in one motion as a group. "Information" items are not discussed or acted upon at the Council meeting unless they are moved to "Action" or "Consent".

No additional items can be moved onto the Consent Calendar once public comment has commenced. At any time during, or immediately after, public comment on Information and Consent items, any Councilmember may move any Information or Consent item to "Action." Following this, the Council will vote on the items remaining on the Consent Calendar in one motion.

For items moved to the Action Calendar from the Consent Calendar or Information Calendar, persons who spoke on the item during the Consent Calendar public comment period may speak again at the time the matter is taken up during the Action Calendar.

Public Comment on Consent Calendar and Information Items Only: *The Council will take public comment on any items that are either on the amended Consent Calendar or the Information Calendar. Speakers will be entitled to two minutes each to speak in opposition to or support of Consent Calendar and Information Items. A speaker may only speak once during the period for public comment on Consent Calendar and Information items.*

Additional information regarding public comment by City of Berkeley employees and interns: Employees and interns of the City of Berkeley, although not required, are encouraged to identify themselves as such, the department in which they work and state whether they are speaking as an individual or in their official capacity when addressing the Council in open session or workshops.

Consent Calendar

- 1. Contract No. 32000282 Amendment: AG Witt, LLC for COVID-19 Emergency Operations Cost Recovery Consultant**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32000282 with AG Witt, LLC for COVID-19 Emergency Operations Cost Recovery Consulting increasing the amount by \$100,000 to a not to exceed amount of \$150,000.
Financial Implications: General Fund - \$100,000
Contact: Dave White, City Manager's Office, (510) 981-7000
- 2. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on September 22, 2020**
From: City Manager
Recommendation: Approve the request for proposals or invitation for bids (attached to staff report) that will be, or are planned to be, issued upon final approval by the requesting department or division. All contracts over the City Manager's threshold will be returned to Council for final approval.
Financial Implications: Various Funds - \$5,510,000
Contact: Henry Oyekanmi, Finance, (510) 981-7300
- 3. Revenue Grant Agreement: Federal COVID19 Funding Support from Centers for Disease Control and Prevention – Epidemiology and Laboratory Capacity Enhancing Detection Grant**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee to submit grant agreements to California Department of Public Health to accept this COVID19 response grant, and to execute any resultant revenue agreements and amendments; which enables us to conduct and implement mitigation strategies in response to COVID19 for the following revenue agreement: HHCS Health Officer Unit's Communicable Disease Prevention and Control Program (CDPCP) COVID-19 Crisis Response's projected allocation of \$2,159,041 for FY 2021-2022.
Financial Implications: See report
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400

Consent Calendar

4. **Revenue Contracts: FY 2021 Aging Services Programs**

From: City Manager

Recommendation: Adopt five Resolutions authorizing the City Manager or her designee to execute any resultant revenue agreements and amendments with Alameda County to provide congregate and home-delivered meals, family caregiver support, senior center activities and information and assistance services to seniors for the following programs for Fiscal Year 2021: 1) Congregate Meals in the amount of \$43,695; 2) Home Delivered Meals in the amount of \$50,954; 3) Family Caregiver Support Program in the amount of \$39,499; 4) Senior Center Activities in the amount of \$22,840; and 5) Information and Assistance Services in the amount of \$49,548.

Financial Implications: See report

Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400

5. **Contract No. 31900042 Amendment: CivicPlus, Inc. for Software Maintenance and Professional for the CivicRec Application**

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to amend Contract No. 31900042 with CivicPlus, Inc. for software maintenance and professional services for the Recreation Division's online registration and reservation system, to increase the contract amount by \$73,756, for a total not to exceed amount of \$116,756, and to extend the contract for three (3) years until November 30, 2025.

Financial Implications: See report

Contact: Savita Chaudhary, Information Technology, (510) 981-6500

6. **Contract Amendment: for Marken Mechanical Services Contract 10142 now MSR Mechanical LLC for on-call heating, air conditioning, and ventilation services for the City**

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute an Amendment to Contract No. 10142, with Marken Mechanical Services to; document the company's ownership and name change to MSR Mechanical LLC; to increase the contract in an amount not to exceed \$30,000 for a total contract amount not to exceed \$80,000; and to extend the term through June 30, 2022.

Financial Implications: See report

Contact: Liam Garland, Public Works, (510) 981-6300

Council Consent Items

- 7. Resolution in Support of California Proposition 17, Restores Right to Vote After Completion of Prison Term, Legislative Constitutional Amendment**
From: Councilmember Hahn (Author), Councilmember Robinson (Co-Sponsor), Councilmember Bartlett (Co-Sponsor)
Recommendation: Adopt a Resolution in support of California Proposition 17, Restores Right to Vote After Completion of Prison Term, Legislative Constitutional Amendment, on the November 3, 2020 ballot, to amend the State Constitution to eliminate disenfranchisement for people on parole, restoring voting rights upon release from prison.
Financial Implications: None
Contact: Sophie Hahn, Councilmember, District 5, (510) 981-7150
- 8. Support for SB-1079 Residential Property: Foreclosure**
From: Councilmember Wengraf (Author)
Recommendation: Send a resolution in support of SB-1079 Residential Property: Foreclosure (Skinner) to Senator Skinner, Assemblymember Wicks, and Governor Gavin Newsom. This bill proposes a trio of provisions intended to mitigate against blight, vacancy, and the transfer of residential property ownership from owner occupants to corporate landlords in the event that California experiences a wave of foreclosures.
Financial Implications: None
Contact: Susan Wengraf, Councilmember, District 6, (510) 981-7160

Action Calendar

The public may comment on each item listed on the agenda for action as the item is taken up. For items moved to the Action Calendar from the Consent Calendar or Information Calendar, persons who spoke on the item during the Consent Calendar public comment period may speak again at the time the matter is taken up during the Action Calendar.

The Presiding Officer will request that persons wishing to speak line up at the podium to determine the number of persons interested in speaking at that time. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. The Presiding Officer may, with the consent of persons representing both sides of an issue, allocate a block of time to each side to present their issue.

Action items may be reordered at the discretion of the Chair with the consent of Council.

Action Calendar – Old Business

- 9. Proposed Navigable Cities Framework for Ensuring Access and Freedom-of-Movement for People with Disabilities in Berkeley (Continued from March 10, 2020)**
From: Commission on Disability
Recommendation: Receive a presentation on the Navigable Cities Framework for Ensuring Access and Freedom-of-Movement for People with Disabilities in Berkeley.
Financial Implications: See report
Contact: Dominika Bednarska, Commission Secretary, (510) 981-6300

Action Calendar – New Business

10. **Adoption - Civic Center Vision and Implementation Plan**
From: City Manager
Recommendation: Adopt a Resolution approving Berkeley’s Civic Center Vision and Implementation Plan, and declaring Council’s intention to support the vision and preferred design concepts articulated in the plan
Financial Implications: See report
Contact: Eleanor Hollander, Economic Development, (510) 981-7530
11. **2019 Crime Report and Five Year Use of Force Report**
From: City Manager
Recommendation: Review and discuss the presentation on Crime Report for 2019 and Use of Force Report for 2015-2019.
Financial Implications: None
Contact: Andrew Greenwood, Police, (510) 981-5900

Council Action Items

12. **Resolution to Incorporate the Practice of 1 Minute and 46 seconds of Mindfulness into City Council Meetings** *(Reviewed by the Agenda & Rules Committee)*
From: Councilmember Davila (Author)
Recommendation: Adopt a resolution to amend the City Council Meeting Agendas and Council Rules of Procedures to include one minute and forty-six seconds of silence to adopt mindfulness into Council meetings to remember the loss of lives due to police violence.
Financial Implications: None
Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120
13. **Healthy Checkout Ordinance** *(Reviewed by the Health, Life Enrichment, Equity & Community Committee)*
From: Councilmember Harrison (Author), Councilmember Hahn (Author)
Recommendation:
 1. Adopt an ordinance requiring stores over 2,500 square feet in size to sell more nutritious food and beverage options in their checkout areas.
 2. Refer to the City Manager to determine funding and staffing needs to implement and enforce the ordinance and sources of funding to support this program.
 3. Refer to the Sugar Sweetened Beverage Product Panel of Experts to consider recommending funding allocations, and to work with City staff to develop protocols for, implementation, education, and enforcement.**Financial Implications:** See report
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

Action Calendar – Policy Committee Track Items

14. Support Community Refrigerators

From: Councilmember Davila (Author)

Recommendation:

1. Adopt a Resolution to create an allocation of the homeless budget towards the purchasing of community refrigerators to be distributed in Council districts to provide access to food for those who have no refrigeration or may be food insecure.
2. Allocate \$8,000 of the budget for the purchasing of the refrigerators.

Financial Implications: See report

Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120

15. Request the United States House of Representatives and/or Senate to introduce “The Breathe Act”

From: Councilmember Davila (Author)

Recommendation:

1. Adopt a resolution requesting the United States House of Representatives and Senate to introduce legislation known as “The Breathe Act”
2. Send copies of this resolution to United States Congresswoman Barbara Lee, Alexandria Ocasio-Cortez, Pramila Jayapal, Rashida Tlaib, Ayanna Pressley and Senator Bernie Sanders.

Financial Implications: None

Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120

Public Comment – Items Not Listed on the Agenda

Adjournment

NOTICE CONCERNING YOUR LEGAL RIGHTS: *If you object to a decision by the City Council to approve or deny a use permit or variance for a project the following requirements and restrictions apply: 1) No lawsuit challenging a City decision to deny (Code Civ. Proc. §1094.6(b)) or approve (Gov. Code 65009(c)(5)) a use permit or variance may be filed more than 90 days after the date the Notice of Decision of the action of the City Council is mailed. Any lawsuit not filed within that 90-day period will be barred. 2) In any lawsuit that may be filed against a City Council decision to approve or deny a use permit or variance, the issues and evidence will be limited to those raised by you or someone else, orally or in writing, at a public hearing or prior to the close of the last public hearing on the project.*

Live captioned broadcasts of Council Meetings are available on Cable B-TV (Channel 33), via internet accessible video stream at <http://www.cityofberkeley.info/CalendarEventWebcastMain.aspx> and KPFB Radio 89.3.

Archived indexed video streams are available at <http://www.cityofberkeley.info/citycouncil>. Channel 33 rebroadcasts the following Wednesday at 9:00 a.m. and Sunday at 9:00 a.m.

Communications to the City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service to the City Clerk Department at 2180 Milvia Street. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk Department for further information.

Any writings or documents provided to a majority of the City Council regarding any item on this agenda will be posted on the City's website at <http://www.cityofberkeley.info>.

Agendas and agenda reports may be accessed via the Internet at <http://www.cityofberkeley.info/citycouncil>

COMMUNICATION ACCESS INFORMATION:

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at (510) 981-6418 (V) or (510) 981-6347 (TDD) at least three business days before the meeting date.



Captioning services are provided at the meeting, on B-TV, and on the Internet.

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02a.07

**SOPHIE HAHN**

Berkeley City Council, District 5  
 2180 Milvia Street, 5th Floor  
 Berkeley, CA 94704  
 (510) 981-7150  
 shahn@cityofberkeley.info

CONSENT CALENDAR  
 September 22, 2020

**To:** Honorable Members of the City Council  
**From:** Vice Mayor Sophie Hahn (Author), Councilmember Rigel Robinson (Co-Sponsor) and Councilmember Ben Bartlett (Co-Sponsor)  
**Subject:** Resolution in Support of California Proposition 17, Restores Right to Vote After Completion of Prison Term, Legislative Constitutional Amendment

RECOMMENDATION

Adopt a Resolution in support of California Proposition 17, Restores Right to Vote After Completion of Prison Term, Legislative Constitutional Amendment, on the November 3, 2020 ballot, to amend the State Constitution to eliminate disenfranchisement for people on parole, restoring voting rights upon release from prison.

BACKGROUND

In 1974, California voters approved Proposition 10, which amended the State Constitution to remove provisions disqualifying voters convicted of certain serious crimes from voting for life, and instead restoring voting rights after release from prison and completion of parole.<sup>1</sup> The result is that all individuals who have been released from prison continue to be denied the right to vote during the time that they are on parole.

Currently, about 50,000 Californians are on state parole, after having finished their prison term.<sup>2</sup> In general, these are individuals who are working, paying taxes, raising families, and living in our communities. And yet the state prohibits them from voting.

Nationwide, 6.1 million Americans are prohibited from voting due to felony disenfranchisement or laws restricting voting rights for those convicted of felony offenses.<sup>3</sup> Although some states are more draconian, California lags behind 17 other states and the District of Columbia in restoring voting rights upon release from prison. Two other states, Maine and Vermont, have no felony disenfranchisement whatsoever.

<sup>1</sup> [https://repository.uchastings.edu/cgi/viewcontent.cgi?article=1795&context=ca\\_ballot\\_props](https://repository.uchastings.edu/cgi/viewcontent.cgi?article=1795&context=ca_ballot_props)

<sup>2</sup> <https://www.ppic.org/publication/californias-changing-parole-population/>

<sup>3</sup> <https://www.sentencingproject.org/publications/6-million-lost-voters-state-level-estimates-felony-disenfranchisement-2016/>

Though the idea of felony disenfranchisement goes back to Aristotle and to the “civil death” tradition of medieval Europe, most other countries have long since abandoned it. In fact, almost half of the countries in Europe allow people to vote in prison.

In the United States, felony disenfranchisement has a racist history rooted in Jim Crow Segregation. For example, in the post-Reconstruction period, several Southern states tailored their disenfranchisement laws in order to keep Black Americans from voting. And from 1850 to 1900, the number of states with felony disenfranchisement laws more than tripled.<sup>4</sup>

Due to racial disparities in policing and incarceration, felony disenfranchisement has a disproportionate impact on Black and Brown communities. According to the Public Policy Institute of California, African Americans are overrepresented in the parole population, making up only 6% of California’s adult population but 26% of individuals on parole.<sup>5</sup>

The right to vote is fundamental and is a cornerstone of our democracy. Denying the right to vote to individuals who have completed their prison sentences is arbitrary, unfair, and deeply out of step with Berkeley values.

Felony disenfranchisement is also counterproductive to public safety. Research published in the *Berkeley La Raza Law Journal* suggests that felony disenfranchisement results in alienation, isolation, and disconnection from community, which only serves to increase recidivism. When a person completes their prison sentence, they should be encouraged to reenter society and have a stake in their community.

California Proposition 17, on the November 3, 2020 ballot, would amend the State Constitution to eliminate disenfranchisement for people on parole, restoring voting rights upon release from prison.

#### FINANCIAL IMPLICATIONS

None.

#### CONTACT INFORMATION

Vice Mayor Sophie Hahn, Council District 5, 510-682-5905 (Cell)

#### ATTACHMENTS

1. Resolution

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<sup>4</sup> Jeff Manza & Christopher Uggen, *Locked Out – Felon Disenfranchisement and American Democracy* (2006).

<sup>5</sup> <https://www.ppic.org/publication/californias-changing-parole-population/>



RESOLUTION NO. ##,###-N.S.  
SUPPORTING CALIFORNIA PROPOSITION 17 TO RESTORE  
VOTING RIGHTS TO CALIFORNIANS UPON RELEASE FROM PRISON

WHEREAS, the right to vote is a fundamental democratic right that must be protected;

WHEREAS, the California Constitution requires the Legislature to provide for the disqualification of voters who are imprisoned or on parole for the conviction of a felony;

WHEREAS, about 50,000 Californians have completed their prison sentences and are living in their communities and paying taxes, and yet are unable to vote because they are on parole;

WHEREAS, California lags behind 19 other states and the District of Columbia which restore voting rights upon release from prison or have no felony disenfranchisement;

WHEREAS, across the United States, felony disenfranchisement laws are rooted in a racist history of voter suppression, and have a disproportionate impact on Black and Brown communities;

WHEREAS, according to the Public Policy Institute of California, African Americans are overrepresented in the parole population, making up 26% of individuals on parole but only 6% of California's adult population;

WHEREAS, research published in the *Berkeley La Raza Law Journal* suggests that felony disenfranchisement results in alienation, isolation, and disconnection from community, which only serves to increase recidivism;

WHEREAS, a survey conducted by Initiate Justice of individuals on parole in California found that 76% of respondents believed voting would help them stay out of jail;

WHEREAS, denying the right to vote to formerly incarcerated people is a form of voter suppression that is deeply out of step with Berkeley values;

WHEREAS, Proposition 17 changes the California Constitution to allow people on state parole to register to vote, thereby allowing them to vote;

WHEREAS, by eliminating an arbitrary barrier to voting, Proposition 17 will move California toward a fairer and more inclusive democracy;

NOW THEREFORE, BE IT RESOLVED that the Berkeley City Council hereby urges approval of Proposition 17 on the November 3, 2020 ballot.





Susan Wengraf  
Councilmember District 6

02a.08

CONSENT CALENDAR  
September 22, 2020

To: Honorable Mayor and Members of the City Council  
From: Councilmember Wengraf  
Subject: Support for SB-1079 Residential Property: Foreclosure

RECOMMENDATION

Send a resolution in support of SB-1079 Residential Property: Foreclosure (Skinner) to Senator Skinner, Assemblymember Wicks, and Governor Gavin Newsom. This bill proposes a trio of provisions intended to mitigate against blight, vacancy, and the transfer of residential property ownership from owner occupants to corporate landlords in the event that California experiences a wave of foreclosures.

FINANCIAL IMPLICATIONS

None

BACKGROUND

The economic fallout from the COVID-19 pandemic has resulted in widespread job loss and financial distress. This raises the prospect that many California homeowners will soon default on their mortgage payments (if they have not done so already) and a wave of home foreclosures could follow. This bill draws upon lessons learned from what happened in California's last foreclosure crisis and proposes mechanisms to try to prevent them from recurring in the event that another wave of foreclosures does hit the state.

During the Great Recession many foreclosed homes were sold in bulk at auctions. For the first time, corporations snatched them up, transferring wealth from families to Wall Street. SB-1079 forbids a foreclosure trustee from bundling properties for sale at a foreclosure auction, instead requiring that each property be bid on separately.

SB-1079 would afford an existing tenant of a foreclosed home, a prospective owner-occupant, or non-profit affordable housing developer 45 days after a home foreclosure auction to make an offer for the home that exceeds the highest bid.

In some California communities, corporations left the homes they owned vacant and in disrepair. SB-1079 increases the civil fine that a governmental entity can impose on an owner for failing to maintain a property purchased at foreclosure sale, in exchange for providing the owner detailed notice of alleged violations and additional time to remedy them.

The bill declares that nothing in the Civil Code provisions governing mortgage liens exempts the legal owner of property purchased at a foreclosure sale from complying with applicable laws regarding the eviction or displacement of tenants, including but not limited to, notice requirements, requirements for the provision of temporary or permanent relocation assistance, the right to return, and just cause eviction requirements.

SB-1079 would sunset January 1, 2026.

ENVIRONMENTAL SUSTAINABILITY

Not directly impacted

CONTACT PERSON

Councilmember Wengraf

Council District 6

510-981-7160

Attachments:

1: Resolution

2: [SB-1079](#)

RESOLUTION NO. ##,###-N.S.

City of Berkeley Support for SB-1079

WHEREAS, The economic fallout from the COVID-19 pandemic has resulted in widespread job loss and financial distress, raising the prospect that many California homeowners will soon default on their mortgage payments; and

WHEREAS, We learned from California's last foreclosure crisis that corporations snatched up single-family homes sold in bulk at auction – shifting wealth from low- and moderate-income families to Wall Street; and

WHEREAS, In some California communities, corporations left the homes they owned vacant and in disrepair; and

WHEREAS, SB-1079 proposes a trio of provisions intended to mitigate against blight, vacancy, and the transfer of residential property ownership from owner occupants to corporate landlords; and

WHEREAS, Legislation supporting homes for homeowners, not corporations is critically needed to prevent a repeat of the Great Recession's housing outcomes.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it fully supports SB-1079 (Skinner).





Commission on Disability

02a.09

ACTION CALENDAR

September 22, 2020

*(Continued from March 10, 2020)*

To: Honorable Mayor and Members of the City Council

From: Commission on Disability

Submitted by: Alex Ghenis, Chairperson, Commission on Disability

Subject: Proposed Navigable Cities Framework for Ensuring Access and Freedom-of-Movement for People with Disabilities in Berkeley

RECOMMENDATION

Receive a presentation on the Navigable Cities Framework for Ensuring Access and Freedom-of-Movement for People with Disabilities in Berkeley.

CURRENT SITUATION AND ITS EFFECTS

The Commission on Disability recently agreed upon a series of priorities for 2019 and early 2020. One of these priorities is a proposed “Navigable Cities” framework to guide investments, regulations, and other actions in the City of Berkeley. An initial Navigable Cities framework was approved by the Commission in its meeting on April 3, 2019. The framework features three (3) Principles of Navigable Cities and four (4) initiatives that the Commission on Disability will pursue throughout 2020. The full Navigable Cities outline is attached to this item.

The Commission on Disability requests that the City Council review and support the Navigable City framework, principals and initiatives. The Commission will provide updates to the City Council on progress moving forward, including any information discovered by the Commission, proposed action items for the City Council, etc. (Item approved 5/1/2019 to be submitted with photos. Motion: Singer, Second: Ramirez, Walsh: Aye, Smith: Aye, Ghenis: Aye, Weiss: Aye, Leeder: LOA, Abstain: 0. Photos approved 11/6/2019: Motion: Leeder, Second: Singer, Smith: Aye, Walsh: Aye, Ghenis: Aye, Ramirez: Aye, Absent: 0 Abstain: 0)

The full principles and initiatives of Navigable Cities are featured in the attached document. They are summarized here:

## Principles:

1. All people residing in and/or visiting the City of Berkeley have the right to efficient, convenient and barrier-free movement.

2. People with disabilities (PWDs) often have distinct transportation-related needs and may be less able to navigate around items obstructing pathways.
3. Changes to commercial activities and government policies (whether in Berkeley, the Bay Area, the State of California, or the United States as a whole) can have notable impacts on navigability.

#### Initiatives:

1. Support smooth, barrier-free pathways frequently used by PWDs.
2. Ensure that new transportation services provide appropriate access to PWDs and do not negatively impact navigability.
3. Provide appropriate input on plans to adjust the layout of neighborhoods, urban centers, streets, pathways, etc.
4. Address the availability and accessibility of appropriate parking options, especially in city-owned and/or city-maintained parking lots/garages.

Proposed “navigable cities” framework for ensuring access and freedom-of-movement for people with disabilities in Berkeley is a Strategic Plan Priority Project, advancing our goal to champion and demonstrate social and racial equity.

The City of Berkeley contains hundreds of miles of streets, sidewalks and other public spaces (e.g. outdoor plazas and parks). Many streets, sidewalks, bicycle pathways and other public spaces do not provide smooth navigation for people with disabilities (PWDs), who collectively represent around 15% of the City’s residents and visitors. In addition, Berkeley features many transportation options including pedestrian and bicycle pathways, BART, buses, paratransit, nonprofit transportation services, transportation network companies (TNCs, e.g. Uber & Lyft), bike-sharing services, etc.; however, not all of these provide full access to people with disabilities, endangering independence and potentially violating civil rights. Examples of inaccessibility include:

- Not all sidewalks feature “curb cuts” at intersections, meaning that individuals using wheelchairs or scooters must essentially take detours – either a full block, or to a nearby driveway. Exiting through driveways may present dangers, such as a lack of visibility to oncoming cars.
- Many sidewalks are excessively uneven, for example as tree roots push soils upward and displace sections of sidewalk. The exact nature of sidewalk damage varies across the City – some feature clear vertical breaks between sidewalk segments, while some sidewalks have “bumps” and cracks.
- Construction of new buildings and maintenance to pathways blocks sidewalks, forcing individuals to use designated temporary pathways or cross streets entirely.



Certain pathways do not feature appropriate accessibility – such as ramps from sidewalks to street-level pathways – or are otherwise difficult to navigate.

- “Shared mobility” services – e.g. ride-sharing and shared bicycles (Ford Go-Bike, etc.) – do not always feature fully-accessible products and services. For example, TNCs have only recently introduced wheelchair-accessible vehicles, which still feature delays compared to TNCs’ regular time frames. Bike-sharing services do not provide alternative, accessible options for individuals with limited balance who could otherwise ride tricycles. Proposed motorized scooters likewise do not provide accessible options, and scooter-riders on sidewalks present dangers to many PWDs.
- Items which are present in the middle of sidewalks and other public spaces may pose barriers to some PWDs; these items include the large sign downtown announcing BART and bus schedules, as well as informational kiosks being explored by City Council and staff. Barriers are of particular concern to individuals who are blind or low-vision and have become familiar with Berkeley’s pathways without obstacles.

These items and more represent ongoing barriers and progressing problems for PWDs in Berkeley. The Commission on Disability is concerned by a lack of accessibility, in general and especially considering Berkeley’s identity as the home of the modern disability rights movement.

#### BACKGROUND

None noted, aside from the information above.

#### ENVIRONMENTAL SUSTAINABILITY

The Commission on Disability believes that pursuing a Navigable Cities framework will present opportunities to improve environmental sustainability. For example, more easily navigable pedestrian pathways and accessible alternatives to shared bicycles will enable PWDs to reduce reliance on personally-operated vehicles and related carbon emissions. The Commission will consider sustainability in its Navigable Cities initiatives.

#### POSSIBLE FUTURE ACTION

Unknown.

#### FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Unknown.

#### CONTACT PERSON

Dominika Bednarska, Disability Services Specialist  
(510) 981-6418

Attachments:

1: Attachments: Pictures and image descriptions of sidewalk issues.

## 2: Presentation

**From:** Shira Leeder [mailto:shira@leeder.com]

**Sent:** Tuesday, September 24, 2019 2:34 AM

**To:** Helen Walsh <branach@comcast.net>; Bednarska, Dominika <DBednarska@cityofberkeley.info>; Alex Ghenis <alex.ghenis@gmail.com>

**Subject:** Re: Shira's unsafe sidewalk experience Photos and notes

Photo 1: Rose and Henry streets pass the Safeway.

Side uneven tree roots causing cracks and uneven pavement making it unsafe for wheelchair users especially those with mobility equipments and seniors, it's like a roller coaster going down a deep grade drop.

Photo 2: 2 blocks away from Rose and Henry around apt 137 uneven side walk by tree. Side walk goes up then angles down very unsafe for wheelchair uses and those with mobility devices.

Photo 3: Up from last photo uneven sidewalk pavement unsafe for wheelchair and those with mobility devices and baby strollers.

Photo 4: by bus stop Berryman street uneven pavement unsafe for wheelchair, mobility devices and baby strollers to pass. The sidewalk needs to be repaved the entire block because the sidewalk is bumpy and dangerous and too narrow. I have to go in the streets where vehicles are and it is risky because of taking chances of being hit and killed.

Photo 5: Sutter and Amador streets by bus stop uneven pavement bump in front of curb cut making it unsafe to pass. I have to use bike lane against traffic or with traffic depending on where I am going especially going home when going toward Solano Avenue. That whole two or three blocks of that since from Shattuck and Rose going toward Sutter street needs to be repaved and put several stop signs or pedestrians safely signals.

Photo 6: No curb cut, drive way cracked sidewalk and street, gravel ditch my wheelchair has to go up or down. This is by the bus stop. The sidewalks are too narrow and at a down incline.

Photo 7: Using bike lane in opposite direction no other cross walks or ways to get to sidewalk. I have to ride in the streets / bike lanes if the sidewalks are too bumpy and hazardous and if there are tree roots issues or construction zones,

Photo 8: No curb cut from bike lane using only cross walk to cross street, no stop sign cars go fast and not stop especially at night time with no street lights and signal to walk in the crosswalk without risking of being hit and killed by vehicles passing by.

On Monday, September 23, 2019, 3:25:08 PM PDT, Helen Walsh <[branach@comcast.net](mailto:branach@comcast.net)> wrote:

Photo 1: Rose and Henry

side uneven tree roots causing cracks and uneven pavement making it unsafe for wheelchair users.

Photo 2: 2 blocks away from Rose and Henry around apt 137 uneven side walk by tree. Side walk goes up then angles down very unsafe for wheelchair uses.

Photo 3: Up from last photo uneven sidewalk pavement unsafe for wheelchair.

Photo 4: by bus stop Berryman street uneven pavement unsafe for wheelchair to pass.

Photo 5: Sutter street by bus stop uneven pavement bump in front of curb cut making it unsafe to pass. I have to use bike lane against traffic or with traffic depending on where I am going.

Photo 6: No curb cut, drive way cracked sidewalk and street, gravel ditch my wheelchair has to go up or down. This is by bus stop.

Photo 7: using bike lane in opposite direction no other cross walks or ways to get to sidewalk.

Photo 8: no curb cut from bike lane using only cross walk to cross street. no stop sign cars go fast.

iSent from the Event Horizon





































**From:** MARTHA SINGER [mailto:marthasinger@me.com]  
**Sent:** Wednesday, November 06, 2019 3:06 PM  
**To:** Bednarska, Dominika <DBednarska@cityofberkeley.info>  
**Subject:** sidewalk obstacles domingo ave



MARTHA SINGER MD  
[marthasinger@mac.com](mailto:marthasinger@mac.com)

# NAVIGABLE CITIES FRAMEWORK

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ALEX GHENIS

CHAIRMAN

COMMISSION ON DISABILITY

# OVERVIEW

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- Goals & Framework
- Principles
- Initiatives
- Current situation
- Other factors
- Q&A

# GOALS & FRAMEWORK

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- Overarching work: create a fully navigable, inclusive city for people with disabilities
- Principles: 3 overarching principles on equity & inclusion
- Initiatives: 4 focus areas for ongoing & upcoming efforts
- COD will continue addressing initiatives; appreciate partnership & support

# PRINCIPLES

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1. All people residing in and/or visiting the City of Berkeley have the right to efficient, convenient and barrier-free movement.
2. People with disabilities (PWDs) often have distinct transportation-related needs and may be less able to navigate around items obstructing pathways.
3. Changes to commercial activities and government policies (whether in Berkeley, the Bay Area, the State of California, or the United States as a whole) can have notable impacts on navigability.



# INITIATIVES

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1. Support smooth, barrier-free pathways frequently used by PWDs.
2. Ensure that new transportation services provide appropriate access to PWDs and do not negatively impact and navigability.
3. Provide appropriate input on plans to adjusted the layout of neighborhoods, urban centers, streets, pathways, etc.
4. Address the availability and accessibility of appropriate parking options, especially in city-owned and/or city-maintained parking lots/garages.

# EXAMPLES OF INACCESSIBILITY

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| Curb Cuts                                                                                                                                                                                                                                                                | Sidewalks                                                                                                                                                          | Construction Barriers                                                                                                         | Shared Mobility                                                                                                                                                       | Sidewalk Obstructions                                                                                                                                                                                                |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"><li>• Not enough curb cuts</li><li>• Need more detectable warnings</li><li>• Problems:<ul style="list-style-type: none"><li>• Extra travel distance (detours)</li><li>• Unsafe crossings</li><li>• Tripping hazard</li></ul></li></ul> | <ul style="list-style-type: none"><li>• Sudden or gradual changes in elevation</li><li>• Often from tree roots</li><li>• Long back-log of 50/50 requests</li></ul> | <ul style="list-style-type: none"><li>• Entirely blocked sidewalks</li><li>• Occasional detours w/ difficult access</li></ul> | <ul style="list-style-type: none"><li>• Transportation Network Companies (TNCs): CPUC purview</li><li>• No accessible alternatives for bikes &amp; scooters</li></ul> | <ul style="list-style-type: none"><li>• Poorly-placed signs &amp; items (e.g. trash bins) in PROW.</li><li>• Creates issues for: physical disabilities with obstruction and blind/low vision safety issues</li></ul> |

# SOLUTIONS

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## Curb Cuts

- ADA Transition Plan (Survey in Process)
- Improvements as part of Construction Projects

## Sidewalks

- ADA Transition Plan (Survey in Process)
- Improvements as part of Construction Projects
- 50/50 Program

## Construction Barriers

- Resources for Increased Enforcement with Contractors
- Adoption of the Caltrans Temporary Pedestrian Access Routes Handbook (2020) for work zones

## Shared Mobility

- Transportation Network Companies (TNCs): CPUC purview
- Transportation and Disability Services are discussing providing adapted scooters and bicycles.
- Disability Services and Transportation are discussing adding adaptive driving equipment and wheelchair vans to City Car Share Fleet.

## Sidewalk Obstructions

- City Ordinance reinforcing the 3 ft clear rule in State and Federal law.
- Resources for enforcement, tree removal etc.











Cheryl Davila  
Councilmember  
District 2

02a.12

ACTION CALENDAR  
September 22, 2020

To: Honorable Mayor and Members of the City Council  
From: Councilmember Cheryl Davila (Author)  
Subject: Resolution to Incorporate the Practice of 1 Minute and 46 seconds of Mindfulness into City Council Meetings

RECOMMENDATION

Adopt a resolution to amend the City Council Meeting Agendas and Council Rules of Procedures to include one minute and forty-six seconds of silence to adopt mindfulness into Council meetings to remember the loss of lives due to police violence.

POLICY COMMITTEE RECOMMENDATION

On August 31, 2020, the Agenda and Rules Committee adopted the following action: M/S/C (Wengraf/Arreguin) to send Item 11 to the City Council with a Qualified Positive Recommendation to observe one minute and forty-six seconds of silence at the September 22, 2020 regular meeting to remember the loss of lives due to police violence; and further remind Councilmembers that moments of reflection, recognition, or celebration are requested through the Mayor’s office for inclusion on the ceremonial calendar. Vote: All Ayes.

BACKGROUND

According to the University of California at Berkeley’s Greater Good Magazine, mindfulness means “maintaining a moment-by-moment awareness of your thoughts, feelings, bodily sensations, and surrounding environment, through a gentle, nurturing lens.” Mindfulness involves acceptance without judgment of our thoughts and feelings and tuning into what we are sensing in the present moment rather than rehashing the past or imaging the future.<sup>1</sup>

While mindfulness and meditation has its roots in the religion of Buddhism, mindfulness as a secular practice was popularized by Jon Kabat-Zinn, who launched the Mindfulness-Based Stress Reduction program at the University of Massachusetts Medical School in 1979. Mindfulness is noted to improve well-being, physical health, and mental health.<sup>2</sup> The adoption of mindfulness practices are specifically beneficial for strengthening the immune system, reducing stress, and enhancing attentiveness.

<sup>1</sup> <https://greatergood.berkeley.edu/topic/mindfulness/definition>

<sup>2</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3679190/>

Particularly relevant to the role of city governance, mindfulness has been found to increase altruism and compassion,<sup>3</sup> reduce implicit bias,<sup>4</sup> increase emotional resilience when confronted with negative feedback,<sup>5</sup> and to help leaders be more confident and act in line with their values.<sup>6</sup> Due to its benefits, mindfulness has been deployed in a multitude of institutions such as schools,<sup>7</sup> prisons,<sup>8</sup> sports,<sup>9</sup> hospitals,<sup>10</sup> and even municipal governments, like San Jose, where Mindful Mondays has been promoted by the city.<sup>11</sup>

Currently, the Berkeley City Council meetings run continuously for five hours or more on Tuesday evenings, with only a brief 10-minute pause for captioning. Incorporating mindfulness practices into the City Council meeting may increase Councilmember's ability to focus on the topics brought before them, alleviate stress or anxiety over decision-making, facilitate Councilmembers being more fully present and emotionally available to the public, and allow for greater creativity when generating solutions for how best to serve the constituency.

The adoption of mindfulness practices has the potential to improve the overall experience and efficacy of governing by reducing the physiological impacts of stress on members of City staff, elected officials, and the community. By reducing the physiological impairments of stress and cognitive fatigue better decision-making might occur. Given these potential benefits, a change to the structure and order of City Council meetings are proposed to include two-minutes of mindfulness at the beginning of the meeting and following ceremonial items, two minutes of mindfulness after reconvening from the captioner's break, and the ability of any Councilmember to request taking a mindfulness pause during the Consent or Action Calendar.

Section II. Meetings, Part D of the Berkeley City Council Rules of Procedure and Order<sup>12</sup> would be amended to read as follow:

"D. Council Meeting Conduct of Business: The agenda for the regular business meetings shall include the following: **One minute and forty-six seconds of silence and mindfulness**; Ceremonial Items (including comments from the City Auditor if requested); Comments from the City Manager; Comments from the Public; Consent Calendar; Action Calendar (Appeals, Public Hearings, Continued Business, Old Business, New Business); Information Reports; and Communication from the Public. Presentations and workshops may be included as part of the Action Calendar. The Chair will determine the order in which the item(s) will be heard with the consent of Council."

Section III. Agenda, Part E Agenda Sequence and Order of Business of the Berkeley City Council Rules of Procedure and Order would be amended to read as follow:

<sup>3</sup> [https://greatergood.berkeley.edu/article/item/meditation\\_causes\\_compassionate\\_action](https://greatergood.berkeley.edu/article/item/meditation_causes_compassionate_action)

<sup>4</sup> [https://greatergood.berkeley.edu/article/item/can\\_mindfulness\\_help\\_reduce\\_racism](https://greatergood.berkeley.edu/article/item/can_mindfulness_help_reduce_racism)

<sup>5</sup> [https://greatergood.berkeley.edu/article/item/can\\_mindfulness\\_help\\_students\\_cope\\_with\\_failure](https://greatergood.berkeley.edu/article/item/can_mindfulness_help_students_cope_with_failure)

<sup>6</sup> [https://greatergood.berkeley.edu/article/item/can\\_mindfulness\\_help\\_you\\_be\\_more\\_authentic](https://greatergood.berkeley.edu/article/item/can_mindfulness_help_you_be_more_authentic)

<sup>7</sup> <https://www.mindfulschools.org/>

<sup>8</sup> <https://www.prisonmindfulness.org/about-us/>

<sup>9</sup> <https://www.apa.org/news/press/releases/2017/08/mindfulness-method>

<sup>10</sup> <https://hospitalnews.com/mindfulness-quiet-revolution/>

<sup>11</sup> <https://www.sanjoseca.gov/Home/Components/Calendar/Event/1760/4738>

<sup>12</sup> [https://www.cityofberkeley.info/uploadedFiles/Clerk/Level\\_3\\_-\\_City\\_Council/City%20Council%20Rules%20of%20Procedure%20-%20Feb%2011%202020%20-%20FINAL.pdf](https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_City_Council/City%20Council%20Rules%20of%20Procedure%20-%20Feb%2011%202020%20-%20FINAL.pdf)

“E. The Council agenda for a regular business meeting is to be arranged in the following order:

1. Preliminary Matters: (Ceremonial, **One minute and forty-six seconds of silence and mindfulness**, Comments from the City Manager, Comments from the City Auditor, Non-Agenda Public Comment)
2. Consent Calendar
3. Action Calendar
  - a) Appeals
  - b) Public Hearings
  - c) Continued Business
  - d) Old Business
  - e) New Business
4. Information Reports
5. Non-Agenda Public Comment
6. Adjournment

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY

None.

CONTACT PERSON

Cheryl Davila  
Councilmember District 2  
510.981.7120  
cdavila@cityofberkeley.info

ATTACHMENTS:

1. Resolution

RESOLUTION NO. ##,###-N.S.

A RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF BERKELEY TO INCORPORATE THE PRACTICE OF 1 MINUTE AND 46 SECONDS OF MINDFULNESS INTO CITY COUNCIL MEETINGS

WHEREAS, Mindfulness is a secular practice of focusing attention onto your thoughts, emotions, and bodily sensations in a moment-to-moment methodology that allows for greater awareness of yourself and your surroundings; and

WHEREAS, The practice of mindfulness has many noted benefits, including boosting the immune system, reducing stress, and enhancing attentiveness; and

WHEREAS, Due to the efficacy of mindfulness, its practices have been adopted in a wide array of institutions that serve impacted populations, such as schools, hospitals, and prisons; and

WHEREAS, Physiological impacts of stress have the ability to diminish the City Staff and Council's ability to effectively carry out the tasks associated with complex decision making; and

WHEREAS, Mindfulness practices have been shown to be an effective method to reduce stress levels in other workplaces; and

WHEREAS, Mindfulness might improve the working conditions during Berkeley City Council meetings by allowing Councilmembers and City Staff to become fully present and attentive at the beginnings of meetings, and more compassionate and self-aware when engaging with the public; and

NOW, THEREFORE BE IT RESOLVED that the City Council of the City of Berkeley will incorporate two minutes of mindfulness practice into the agenda of City Council meetings, wherein Councilmembers and members of the public are invited to hold a moment of silence to check in with their bodies and mind before embarking on the often arduous work of city governance; and

BE IT FURTHER RESOLVED, Section II. Meetings, Part D of the Berkeley City Council Rules of Procedure and Order is amended to read:

“D. Council Meeting Conduct of Business: The agenda for the regular business meetings shall include the following: **One minute and forty-six seconds of silence and mindfulness**; Ceremonial Items (including comments from the City Auditor if requested); Comments from the City Manager; Comments from the Public; Consent Calendar; Action Calendar (Appeals, Public Hearings, Continued Business, Old Business, New Business); Information Reports; and Communication from the Public. Presentations and workshops may be included as part of the Action Calendar. The Chair will determine the order in which the item(s) will be heard with the consent of Council.”

BE IT FURTHER RESOLVED, Section III. Agenda, Part E Agenda Sequence and Order of Business of the Berkeley City Council Rules of Procedure and Order IS amended to read:

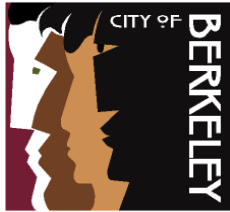
“E. The Council agenda for a regular business meeting is to be arranged in the following order:

1. Preliminary Matters: (Ceremonial, **One minute and forty-six seconds of silence and mindfulness**, Comments from the City Manager, Comments from the City Auditor, Non-Agenda Public Comment)
2. Consent Calendar
3. Action Calendar
  - a) Appeals
  - b) Public Hearings
  - c) Continued Business
  - d) Old Business
  - e) New Business
4. Information Reports
5. Non-Agenda Public Comment
6. Adjournment

BE IT FINALLY RESOLVED, These changes to the Agenda will begin at the next scheduled Council meeting and the City Council will include one minute and forty-six seconds of silence and mindfulness as part of the City Council Agenda.







Kate Harrison  
Councilmember District 4

02a.13

ACTION CALENDAR  
September 22, 2020

To: Honorable Mayor and Members of the City Council  
From: Councilmembers Kate Harrison and Sophie Hahn  
Subject: Healthy Checkout Ordinance

RECOMMENDATION

1. Adopt an ordinance requiring stores over 2,500 square feet in size to sell more nutritious food and beverage options in their checkout areas.
2. Refer to the City Manager to determine funding and staffing needs to implement and enforce the ordinance and sources of funding to support this program.
3. Refer to the Sugar Sweetened Beverage Product Panel of Experts to consider recommending funding allocations, and to work with City staff to develop protocols for, implementation, education, and enforcement.

POLICY COMMITTEE RECOMMENDATION

On March 9, 2020, the Health, Life Enrichment, Equity & Community Committee adopted the following action: (Hahn/Kesarwani) to send the item to Council with a positive recommendation and the following amendments requested of the author: a. For the Council report, add a third recommendation to the item to request a referral to the Sugar Sweetened Beverage Product Panel of Experts to consider recommending allocations to support implementation, education & enforcement and to work with staff to develop protocols for the same. Additionally, under financial implications, include that enforcement of the ordinance should be focused on education and only secondarily, on traditional enforcement mechanisms. b. For the Ordinance: Under 9.82.030, strike the reference to chips and change 230 mg of sodium to 200 mg; under 9.82.060 include an effective date of January 1, 2021, and an enforcement and ongoing education date of July 1, 2021; and amend under definition 9.82.020, the defined term “Endcap” should become “Checkout Endcap” and substitutions made throughout; Checkout Endcap is defined as the product displays at the endpoints of areas designated or utilized primarily for waiting in line to make a purchase. Vote: Ayes – Kesarwani, Hahn; Noes – None; Abstain – None; Absent – Bartlett.

FINANCIAL IMPLICATIONS

1. Implementation of the ordinance would require staff time to educate the approximately 25 stores about what is required of them to comply with the ordinance. The Center for Science in the Public Interest has created a suggested list of products that meet the criteria of the ordinance. Healthy Berkeley funded

programs Bay Area Community Resources and Community Health Education Institute are both funded for FY 21 to work with stores, including with store education and monitoring. Community partners could assist with implementation. Additionally, the City Council approved a budget recommendation from the Sugar Sweetened Beverage Product Panel of Experts in May 2019, which includes additional funding for FY 20 and 21. The total recommended budget for the City of Berkeley Public Health Division (PHD) is \$427,500 per fiscal year. In Fiscal Years 2016-17, 2017-18 and 2018-19, the City Council has voted to allocate \$225,000 per fiscal year to the PHD for the administration and evaluation of the Healthy Berkeley Program. This represents an increase of \$202,500 per year in Fiscal Years 2019-20 and 2020-21.

2. Enforcement should be focused primarily on positive education and secondarily on traditional enforcement. Enforcement of the ordinance may be incorporated into the regular inspections of food retailers conducted by the City. Spot checks of items sold in each aisle is sufficient to monitor compliance.

### BACKGROUND

Today's food landscape plays a large role in determining what people purchase and consume. Unhealthy food and beverages are promoted and placed repeatedly throughout retail stores. Cheap, ready-to-eat foods high in salt, saturated fat, and added sugars dominate checkout aisles, where shoppers are more likely to make impulse purchases and where parents struggle with their children over demands to buy treats at the end of a shopping trip.

This ordinance would require all stores over 2,500 square feet in size that sell at least 25 linear feet of food to follow the requirements for Healthy Checkout, as written in the ordinance, the specifics of which are to be determined in the policy committee process. This would impact approximately 25 stores in Berkeley, including Safeway, Whole Foods, CVS, Walgreens, Berkeley Bowl, and Monterey Market.

### ***Health Impacts of Sugar and Sodium Consumption and Related Disease Disparities***

Impulse buying at checkout contributes to the high levels of sugar consumption in American diets. There has been much research and media attention<sup>1</sup> about the health impacts of excessive added sugar intake, including elevated risk of tooth decay, heart disease, and Type 2 diabetes.<sup>2</sup> The adverse health effects of added sugar consumption further entrench health disparities, burdening people of color more than white populations. Currently, Type 2 diabetes is on the rise across the country; one in three children and one of two children of color will be diagnosed in their lifetime.<sup>3</sup>

Diets that are high in sodium are linked to high blood pressure, heart disease, and stroke,<sup>4</sup> all of which disproportionately affect African Americans and communities of color.<sup>5</sup>

### ***Health Equity and Inequity***

Berkeley also has health disparities in diet-related disease. In 2014, African American residents were four times more likely than White residents to be diagnosed with

diabetes and 14 times more likely to be hospitalized due to its effects.<sup>6</sup> This gap has decreased since 2014, but the disparity continues to exist.<sup>7</sup> Rates of hospitalization for heart disease and high blood pressure are also significantly higher among African-American residents than White and Latino residents.<sup>5</sup>

On a national scale, racial and ethnic minorities experience diet-related disparities – diets high in fat and salt and low in fruits, vegetables, and whole grains.<sup>8</sup> These diet-related disparities lead to additional health disparities including heart disease and diabetes, as discussed above. Providing more nutritious options will benefit people of all backgrounds, but it will disproportionately benefit low-income communities and communities of color who are most affected by nutrition-related health issues.

### ***Checkout Areas of Grocery Stores Contribute to the Problem***

Consumers are trying to make healthier purchases. A 2019 report found that 73 percent of shoppers are concerned about the nutritional content of their food.<sup>9,10</sup>

Despite consumer desire to select healthier foods, unhealthy foods are prevalent in checkout areas in a wide variety of retail stores. A national study of 8,600 stores – including supermarkets, convenience stores, drug stores, and dollar stores – found that 88 percent display candy at checkout and one-third (34 percent) sell sugar-sweetened beverages.<sup>11</sup> Only 24 percent of stores sell water at checkout, and only 13 percent sell fresh fruits or vegetables at checkout.<sup>8</sup> Almost all supermarkets (91 percent) display candy and 85 percent sell soda and other sugary drinks at checkout.<sup>8</sup>

In 2018, a Berkeley-based youth group assessed a sample of 35 Berkeley stores including Walgreens, Safeway, Trader Joes, Target, Berkeley Bowl, Dollar Tree and others. Data was collected from 16,404 facings, which are the display of a single product on the shelf (not including the items stacked behind it). They found that 69 percent of beverages and 81 percent of foods sold in the checkout area of surveyed stores were considered unhealthy using the National Alliance for Nutrition and Activity Model Nutrition Standards for Checkout.<sup>12</sup>

Research shows that food choices are strongly affected by the environments in which they are made. The aim of placing food and beverages at checkout is to induce unplanned purchases; thus, unhealthy checkout options undermine consumers' efforts to purchase healthier foods.<sup>13</sup> The placement of snacks near the register increases the likelihood that people purchase those foods.<sup>14</sup> In addition, most of the candy, soda, and chips in checkout aisles are placed at eye-level and within reach of children, undermining parents' efforts to feed their children well.<sup>15</sup>

Three-quarters of parents report that it is hard to shop at grocery stores because unhealthy food is so prevalent.<sup>16</sup> Healthy checkout aisles provide all families more opportunities to say yes to their kids.

***Grocery Stores are a Prime Place for Policy Change***

Grocery stores are Americans' top source for food and beverages, providing more than 60 percent of calories.<sup>17</sup> Ninety percent of Supplemental Nutritional Assistance Program (SNAP) dollars are redeemed at supermarkets and grocery stores.<sup>18</sup> Though grocery stores sell a wide range of healthy products, they are also the largest contributor of unhealthy food and beverages to the diet. Seventy percent of the sugary beverages children consume come from food retail.<sup>19</sup>

Sugary drinks are promoted repeatedly throughout stores; appearing in as many as 25 different places in a single grocery store.<sup>20</sup> At checkout, these drinks make up 60% of beverage offerings.<sup>21</sup>

Healthy Checkout also provides an opportunity for grocery stores. When United Kingdom grocery stores provided healthier options at checkout, consumers responded positively and provided a “responsible” branding opportunity for those stores.<sup>22</sup> Consumers want healthier options, and stores can use this fact to their advantage.

For all these reasons, grocery store checkout lanes are an ideal place to begin changing norms around healthy snacks and drinks.

***Strategies to Reduce Sugar Consumption in Berkeley***

In 2014, Berkeley became the first city in the country to tax the distribution of sugar sweetened beverages. In the last five years, the City created the Healthy Berkeley program which supports the Berkeley Unified School District garden education program as well as community programs that educate residents about nutrition and are changing norms around beverage choice.

This ordinance is another effort to create a healthy food environment that would support families by providing them the ability to avoid high-calorie, low-nutrient food and beverages when they do their grocery and other shopping. Individuals and families who want to purchase sugary drinks, candy, chips, and other sweet and salty snacks will be able to find them in their respective aisles in the center of stores. By changing checkout norms, shoppers and their children face less temptation to consume sugary foods and there is less reinforcement of these unhealthy choices.

***Berkeley Residents are Demanding Checkout Changes***

In 2018, Berkeley-based youth advocates conducted four focus groups where adults and adolescents unanimously supported removing unhealthy food and beverages from grocery store checkout lanes and requiring stores to have healthy checkout aisles. Participants suggested retailers stock checkout with water, fruit juice, coffee, and tea. They also requested that gum, mints and healthy snacks be available. Using the National Alliance for Nutrition and Activity standards as a guide, this ordinance aims to create checkout aisles where beverages with no added sugars or artificial sweeteners, such as 100% juice and water are considered healthy beverages, and where healthy snacks are predominantly fruits, nuts, and vegetables.

In order to streamline implementation and enforcement, the proposed Healthy Checkout Ordinance restricts added sugars and sodium for food products sold at checkout.

### ***Outreach and Focus Groups***

The Center for Science in the Public Interest performed four focus group studies in 2019 regarding the proposed Healthy Checkout Ordinance. The focus groups were intentionally diverse but focused on youth and health advocates. The four focus groups were 1) Berkeley High School students 2) Latinx women in South Berkeley, conducted in Spanish 3) African-American women, hosted by Healthy Black Families and 4) North and Northwest Berkeley residents, hosted by Urban Adamah. From the focus groups, advocates learned that half reported feeling stress at checkout, there was unanimous support for healthy checkout options in grocery stores, and parents and children are susceptible to impulse purchases.

There were also nine interviews conducted with a dentist, a Community Health Commissioner, two non-profit leaders, four local retail managers, and one store owner. 100% of the retailers were interested in making healthier changes and 50% of the managers were interested in supporting the ordinance directly. All retailers also stated that straightforward guidelines would help with implementation.

The City has also begun some outreach, with positive results. Healthy Checkout was recently polled in the Berkeley Considers engagement portal, where over 95% of respondents were in favor. Over 100 people responded to the question.

### ***Healthy Checkout Reduces Impulse Buying of Sugary Snacks and Drinks***

A recent study by the University of Cambridge analyzed purchasing data for common unhealthy checkout foods from 2013-2017 in nine U.K. supermarket chains. They found that consumers purchased 17 percent fewer sweets, chocolate and potato chips. One year later the decline in unhealthy purchases remained steady at 16 percent.<sup>1</sup>

The Healthy Checkout Ordinance will create a level playing field for customers and retailers and support consistent, healthy snacking norms for shoppers and families.

### ***Providing Alternatives at Checkout in Berkeley: Ordinance Elements***

The attached ordinance (Attachment 1):

- limits food and beverage products sold at the checkout area;
- applies to approximately 25 stores in Berkeley that are over 2,500 square feet (see attached) and have more than 25 linear feet of food for sale; and
- allows only beverages with no added sugars and no artificial sweeteners and food items with limited calories, added sugars, and sodium to be sold in the checkout area.

These limitations allow for healthy alternatives to proliferate in checkout areas. Stores will continue to sell food items in their checkout areas, and limiting the salt and added

sugars will lead to stores selling fruits, vegetables, seeds, nuts, water, milk, and other healthier options.

The attached ordinance still has some unanswered questions that will require input from public health advocates, City staff, food retailers, and the policy committee. Those questions are:

- how to define healthy food, and what parameters are most appropriate;
- date of implementation;
- appropriate definition of “checkout area”. The attached draft ordinance includes the definition of “checkout area” as defined in AB 765, but that definition may not appropriately reflect the needs of all large retail stores in Berkeley.

#### RATIONALE FOR RECOMMENDATION

Requiring the approximately 25 stores to follow the requirements for Healthy Checkout would eliminate the encouragement of unplanned purchases of unhealthy foods and beverages. Such a change would thus contribute to healthy norms and reduce the consumption of sugary drinks and unhealthy foods in the City of Berkeley.

#### ALTERNATIVES CONSIDERED

In February 2019, Assemblymember Buffy Wicks introduced AB 765, a bill which would implement Healthy Checkout statewide. However, as the bill has not advanced from committee since April, progress at the state level is not guaranteed.

In the United Kingdom, many grocery stores have voluntarily undertaken a healthy checkout initiative.<sup>22</sup> However, without clear standards for what constitutes “healthy” or enforcement, the voluntary model is too modest to draw conclusions about long-term health impacts. In addition, the interviews with retailers indicated that voluntary compliance without straightforward guidelines would be more difficult to follow.

#### CONTACT PERSON

Kate Harrison, District 4

#### ATTACHMENTS:

1: Draft Ordinance

- 
- <sup>1</sup> Brody, JE. The Downside of Having a Sweet Tooth. *The New York Times*. July 22, 2019. <https://www.nytimes.com/2019/07/22/well/eat/the-downside-of-having-a-sweet-tooth.html>.
- <sup>2</sup> U.S. Department of Health and Human Services and U.S. Department of Agriculture. *2015–2020 Dietary Guidelines for Americans 8th Edition*. Washington, DC; HHS and USDA, 2015.
- <sup>3</sup> *Lancet Diabetes Endocrinol*. 2014 Nov;2(11):867-74. doi: 10.1016/S2213-8587(14)70161-5. Epub 2014 Aug 12.
- <sup>4</sup> <https://www.hsph.harvard.edu/nutritionsource/salt-and-sodium/>
- <sup>5</sup> <https://www.cdc.gov/mmwr/volumes/67/ss/ss6705a1.htm>
- <sup>6</sup> City of Berkeley. *Health Status Report 2014*. Berkeley, CA; 2014.
- <sup>7</sup> City of Berkeley. *Health Status Report 2018*. Berkeley, CA; 2018.
- <sup>8</sup> Satia, Jessie A. *Diet-Related Disparities: Understanding the Problem and Accelerating Solutions*. J. Am Diet Assoc. 2009 April.
- <sup>9</sup> Food Marketing Institute. *The Power of Health and Well-Being in Food Retail*. Arlington, VA: FMI; 2019.
- <sup>10</sup> International Food Information Council Foundation. *2019 Food & Health Survey*. Washington, D.C.: IFIC; 2019.
- <sup>11</sup> Barker D, Quinn C, Rimkus L, Zenk S, Chaloupka F. *Availability of Healthy Food Products at Check-out Nationwide, 2010-2012*. Chicago, IL: Bridging the Gap Program, Health Policy Center, Institute for Health Research and Policy, University of Illinois at Chicago; 2015.
- <sup>12</sup> The Center for Science in the Public Interest. *Model Nutrition Standards for Checkout*. <https://cspinet.org/protecting-our-health/nutrition/model-nutrition-standards-checkout>.
- <sup>13</sup> Center for Science in the Public Interest. *Temptation at Checkout: The Power of Point-of-Sale Retail Food Marketing*. Washington, D.C.: CSPI; 2015.
- <sup>14</sup> Kerr J, Sallis JF, Bromby E, Glanz K. Assessing Reliability and Validity of the GroPromo Audit Tool for Evaluation of Grocery Store Marketing and Promotional Environments. *J Nutr Educ Behav*. 2012;44(6):597-603. doi:10.1016/j.jneb.2012.04.017.
- <sup>15</sup> Horsley JA, Absalom KA, Akiens EM, Dunk RJ, Ferguson AM. The Proportion of Unhealthy Foodstuffs Children Are Exposed to at the Checkout of Convenience Supermarkets. *Public Health Nutr*. 2014;17(11):2453-2458.
- <sup>16</sup> Caravan ORC International. *Checkout Polling: Online Survey of 1,024 adults*. Princeton, NJ; 2016.
- <sup>17</sup> Mancino L, Guthrie J. *Supermarkets, Schools, and Social Gatherings: Where Supplemental Nutrition Assistance Program and Other U.S. Households Acquire their Foods Correlates with Nutritional Quality*. Washington, DC: U.S. Department of Agriculture Economic Research Center; 2018.
- <sup>18</sup> U.S. Department of Agriculture Food and Nutrition Service. *2015 SNAP Retailer Management Year-End Summary*. Washington, D.C.: USDA; 2015.
- <sup>19</sup> Poti JM, Slining MM, Popkin BM, Kenan WR. Where are kids getting their empty calories? Stores, schools, and fast food restaurants each play an important role in empty calorie intake among US children in 2009-2010. *J Acad Nutr Diet*. 2014;114(6):908-917. doi: 10.1016/j.jand.2013.08.012.
- <sup>20</sup> Cohen DA, Bogart L, Castro G, Rossi AD, Williamson S, Han B. Beverage marketing in retail outlets and The Balance Calories Initiative. *Prev Med*. 2018;115:1-7.
- <sup>21</sup> Fielding-Singh P, Almy J, Wootan MG. *Sugar Overload: Retail Checkout Promotes Obesity*. Washington, DC: Center for Science in the Public Interest, 2014.
- <sup>22</sup> Winkler, Lise L, et al. *Substituting Sugar Confectionary with Fruit and Healthy Snacks at Checkout – A Win-Win Strategy for Consumers and Food Stores?* BMC Public Health. 2016

ORDINANCE NO. -N.S.

ADDING CHAPTER 9.82 TO THE BERKELEY MUNICIPAL CODE "HEALTHY CHECKOUT"

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That the Berkeley Municipal Code is amended to read as follows:

**9.82.010. Findings and Purpose.**

The City of Berkeley hereby finds and declares as follows:

- A. Diets with an excess of added sugars and sodium are correlated to chronic health issues including diabetes, high blood pressure, and stroke.
- B. Food choices are strongly affected by the environments in which they are made. The placement of unhealthy snacks near a register increases the likelihood that consumers will purchase those foods and drinks, thus undermining consumer health choices and public health initiatives.
- C. It is in the interest of the health, safety, and welfare of all who live, work, and do business in the City that large stores offer healthy options and do not actively encourage the purchase of unhealthy foods.
- D. This Chapter is consistent with the General Provisions of Environmental Health of the City (Berkeley Municipal Code 11.04).

**9.82.020. Definitions.**

- A. "Added Sugars" means sugars added during the processing of food and beverages, or are packaged as such, and include sugars (free, mono and disaccharides), sugars from syrups and honey, and sugars from concentrated fruit or vegetable juices that are in excess of what would be expected from the same volume of 100 percent fruit or vegetable juice of the same type, as defined in Section [101.9](#) of Title 21 of the Code of Federal Regulations.
- B. "Artificial Sweetener" means sweeteners with few to no calories that have a higher intensity of sweetness per gram than sucrose.
- C. "Category List" means the list of foods and beverages which meet the standards of BMC 9.82.030.
- D. "Checkout Area" means any area that is accessible to a customer of the Large Retail Store that is either:
  - i. within a 3-foot distance of any Register; or
  - ii. designated primarily for or utilized primarily by customers to wait in line to make a purchase at a Register, up to and including the Checkout Endcap.



- E. "Checkout Endcap" means product displays placed at endpoints of areas designated primarily for or utilized primarily by customers to wait in line to make a purchase.
- F. "Register" means a device used for monetary transactions that calculates the sales of goods and displays the amount of sales for the customer.
- G. "Large Retail Store" means a commercial establishment selling goods to the public with a total floor area over 2,500 square feet and selling 25 linear feet or more of food.

**9.82.030. Healthy Checkout Areas.**

Each Large Retail Store shall, at all hours during which the Large Retail Store is open to the public, ensure that all foods and beverages sold in all Checkout Areas meet the standards in Sec 9.82.030 A-C and comply with the list of qualifying food and beverage categories:

- A. Beverages with no added sugars and no artificial sweeteners.
- B. Food items with no more than 5 grams of added sugars, and 200 milligrams of sodium per labeled serving.
- C. Food items must be in the following categories: chewing gum and mints with no added sugars, fruit, vegetables, nuts, seeds, legumes, yogurt or cheese and whole grains.

City staff will provide technical assistance for implementation. Bi-annual review of qualifying food and beverage categories will be done by the Public Health Division. There will be a 120 day phase-in period if any changes are made.

**9.82.040. Enforcement.**

- A. The City is hereby authorized to issue all rules and regulations consistent with this ordinance, including, but not limited to, fees for re-inspection.
- B. Compliance with this Chapter shall be administered by the City during regular inspections of qualifying Large Retail Stores. The City may require a Large Retail Store to provide such information as may be necessary to determine the Large Retail Store's compliance with this Chapter.

**9.82.050. Violation--Penalty.**

- A. A Large Retail Store that violates any provision of this chapter may be subject to administrative citations pursuant to Chapter [1.28](#) of this Code.
- B. This section shall not limit the City from recovering all costs associated with implementing this chapter or investigating complaints pursuant to fee resolution.

C. Remedies and penalties under this chapter are cumulative and not exclusive.

**9.82.060. Effective Date.**

This ordinance and the legal requirements set forth herein shall take effect and be in force January 1, 2021. Enforcement pursuant to 9.82.040 shall commence no sooner than July 1, 2021.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.



02a.14

Cheryl Davila  
Councilmember  
District 2

CONSENT CALENDAR  
September 22, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila

Subject: Support Community Refrigerators

RECOMMENDATION

1. Adopt a Resolution to create an allocation of the homeless budget towards the purchasing of community refrigerators to be distributed in Council districts to provide access to food for those who have no refrigeration or may be food insecure.
2. Allocate \$8,000 of the budget for the purchasing of the refrigerators.

RATIONALE FOR RECOMMENDATION

The City of Berkeley spent \$6.5 million of the general fund to combat homelessness in 2019. The COVID-19 pandemic, the raging fires and smoke in the state of California, the unhoused community is being hit even harder. The economic challenges of businesses closing, financial strains and health concerns increasing leads to increased disparities. It is necessary to support our communities who cannot buy basic necessities for survival such as food. A district fridge would bring together our communities to aid the homeless. Moreover, this is a part of a larger goal to bridge financial inequities in the City of Berkeley.

BACKGROUND

The City of Berkeley spent close to \$20 million on providing homeless services. About \$6.5 million came from its general fund, about \$9.5 million came from regional, state, and federal funds and \$3.9 million were one-time funds from the state's Homeless Emergency Aid Program.

COVID-19 has strained access to money and resources such as food for our homeless communities. The fires and dangerous air quality have also created a need for cooled water. Health disparities increase in times of distress and hit our at-risk communities the hardest.

Implementing an accessible refrigerator program, run by each district and its neighborhoods is a step in the right direction. Several cities across the country such as Los Angeles, Oakland, and New York have already created community fridges. Businesses, organizations, and individuals work together to keep the fridges stocked with prepackaged meals, leftovers, fresh fruits and vegetables, water, and other drinks. Anyone who feels the need to can take anything they need, at any time of day.

This is essential now. Food insecurity is an issue that ravages homeless communities. Yet, in some cities, we dump more than one million tons of food into landfills . Many community fridges are located in areas with high levels of food insecurity, either in “food deserts” (neighborhoods that lack access to fresh, affordable food) or “food swamps” (neighborhoods where there is an overabundance of fast food).

In the City of Oakland, the community group “Town Fridge” has set up refrigerators in publicly accessible locations throughout Oakland. The purpose is to create a mutual aid to address food insecurities in the community. These community refrigerators have donation guidelines posted at their locations, where they accept produce, pantry staples, bottled water, prepared meals but forbid raw meat. They also require: label and dates of all perishables on food containers; placing non-perishables on the shelving outside the fridge; If a fridge is full, they ask donors to not leave the food outside the fridge, but donate the food to a nearby encampment. Many locations have outside shelving for placement of non perishable items.

Residents can also apply to be a “fridge host”, hosting a community refrigerator on their block. Since this program has been established, it is a model for other cities to implement.

Community fridges will allow 24/7 access to fresh foods to the public, while empowering people of our community.

#### FINANCIAL IMPLICATIONS

The estimated price of a low-cost fridge is approximately \$800. Purchasing one for each district of Berkeley amounts to approximately \$8,000 allocated from the budget.

This program can be at no cost to the City as residents replace their refrigerators with newer technology refrigerators, and can donate their old refrigerators to be used as Community Refrigerators.

#### ENVIRONMENTAL SUSTAINABILITY

Protecting our communities during this climate and health crisis is an act of environmental sustainability.

#### CONTACT PERSONS

Cheryl Davila  
Councilmember District 2  
510.981.7120  
[cdavila@cityofberkeley.info](mailto:cdavila@cityofberkeley.info)

Sanjita Pamidimukkala  
Eshal Sandhu  
District 2 Intern

#### ATTACHMENTS:

1. Resolution
2. Four Pictures from Deputy City Manager Paul Buddenhagen of Community Fridge at 59th and Marshall

#### REFERENCES:

1. Oakland Town Fridge <https://linktr.ee/townfridge>





# TOWN FRIDGE

Current Locations:

**NORTH OAKLAND**  
+59th Street,  
in between Marshall  
and Fremont

**WEST OAKLAND**  
+Linden Street, Past 30th  
+16th Street and West  
+14th Street and Peralta

**DOWNTOWN**  
+Broadway and 15th  
Street, in the plaza

**WE KEEP US FED**

**FREE FOOD**

**COMIDA GRATIS**

THIS ISN'T CHARITY  
THIS IS MUTUAL AID

TAKE WHAT YOU NEED - LEAVE WHAT YOU DON'T

---

## TOWN FRIDGE DONATION GUIDELINES

**OPEN 24/7**

We Accept:  
Produce  
Pantry Staples  
Bottled Water  
Prepared Meals  
**NO RAW MEAT**

**WE KEEP US FED**

Label and date all perishables on the container.  
Put non-perishables on the shelving outside the fridge.  
If a fridge is full, do not leave your donation! Check another fridge location, see if there is a nearby encampment or people who would want the food. If they say no, or you cannot find anyone, please take it home and do not leave it outside the fridge.  
Spread the love! If you have a big donation of the same items, spread it across several fridges.  
Tag @townfridge on Instagram when you make a donation, so we can keep track of donations and give live updates.  
Take what you need, leave what you can.

THIS ISN'T CHARITY THIS IS MUTUAL AID









RESOLUTION NO. ##,###-N.S.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY, CALIFORNIA,  
PROVIDING OUR HOUSELESSNESS COMMUNITY WITH DISTRICT REFRIGERATORS

WHEREAS, The City of Berkeley spent close to \$20 million on providing homeless services. About \$6.5 million came from its general fund, about \$9.5 million came from regional, state, and federal funds and \$3.9 million were one-time funds from the state's Homeless Emergency Aid Program; and

WHEREAS, COVID-19 has strained access to money and resources such as food for our homeless communities. The fires and dangerous air quality have also created a need for cooled water. Health disparities increase in times of distress and hit our at-risk communities the hardest; and

WHEREAS, Implementing an accessible refrigerator program, run by each district and its neighborhoods is a step in the right direction. Several cities across the country such as Los Angeles, Oakland, and New York have already created community fridges. Businesses, organizations, and individuals work together to keep the fridges stocked with prepackaged meals, leftovers, fresh fruits and vegetables, water, and other drinks. Anyone who feels the need to can take anything they need, at any time of day; and

WHEREAS, This is essential now. Food insecurity is an issue that ravages homeless communities. Yet, in some cities, we dump more than one million tons of food into landfills . Many community fridges are located in areas with high levels of food insecurity, either in "food deserts" (neighborhoods that lack access to fresh, affordable food) or "food swamps" (neighborhoods where there is an overabundance of fast food); and

WHEREAS, In the City of Oakland, the community group "Town Fridge" has set up refrigerators in publicly accessible locations throughout Oakland. The purpose is to create a mutual aid to address food insecurities in the community. These community refrigerators have donation guidelines posted at their locations, where they accept produce, pantry staples, bottled water, prepared meals but forbid raw meat. They also require: label and dates of all perishables on food containers; placing non-perishables on the shelving outside the fridge; If a fridge is full, they ask donors to not leave the food outside the fridge, but donate the food to a nearby encampment. Many locations have outside shelving for placement of non perishable items. Residents can also apply to be a "fridge host", hosting a community refrigerator on their block. Since this program has been established, it is a model for other cities to implement; and

WHEREAS, Community fridges will allow 24/7 access to fresh foods to the public, while empowering people of our community; and

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Berkeley, California supports not only the implementation of district fridges to reduce the amount of food insecurity in the homeless community, but also the reduction of financial inequities in our city. Specifically, the Council of the City of Berkeley calls for:

1. Create an allocation of the homeless budget towards the purchasing of community refrigerators to be distributed in Council districts to provide access to food for those who have no refrigeration or may be food insecure.
2. Allocate \$8,000 of the budget for the purchasing of the refrigerators.



Cheryl Davila  
Councilmember  
District 2

02a.15

CONSENT CALENDAR  
September 22, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila

Subject: Request the United States House of Representatives and/or Senate to introduce  
"The Breathe Act"

RECOMMENDATION

1. Adopt a resolution requesting the United States House of Representatives and Senate to introduce legislation known as "The Breathe Act"
2. Send copies of this resolution to United States Congresswoman Barbara Lee, Alexandria Ocasio-Cortez, Pramila Jayapal, Rashida Tlaib, Ayanna Pressley and Senator Bernie Sanders.

BACKGROUND

The BREATHE Act is proposed legislation by the Movement for Black Lives Electoral Justice Project to get the United States House of Representatives to introduce it in a form of a bill. The proposed legislation contains 4 parts: (1) Divesting Federal Resources from Incarceration and Policing & Ending Criminal-Legal System Harms; (2) Investing in New Approaches to Community Safety Utilizing Funding Incentives; (3) Allocating New Money to Build Healthy, Sustainable & Equitable Communities for All People; (4) Holding Officials Accountable & Enhancing Self-Determination of Black Communities.

**1. Divesting Federal Resources from Incarceration and Policing & Ending Criminal-Legal System Harms**

The proposed legislation would eliminate federal programs and agencies used to finance and expand the U.S. criminal-legal system, such as the Department of Defense program, the Edward Byrne-Justice Assistance Grant Program, Community Oriented Policing Services, the Drug Enforcement Administration, and Immigration and Customs Enforcement. The legislation would ensure that non-punitive, non-carceral elements of these programs are identified so that they can be transferred to another funding source. Make recommendations to dramatically reduce the Department of Defense budget. The legislation directly makes changes to the federal criminal-legal system, including changes to the policing, prosecution, sentencing, and jailing practices that have disproportionately criminalized Black and Brown communities, LGBTQIA people, Indigenous people, and disabled people. Specific changes include, but are not limited to:

- Elimination of surveillance tactics that are disproportionately used to target Black, Brown, and Muslim communities by prohibiting predictive policing, racial recognition technologies, drones, and similar tools;
- Eliminating the use of electronic monitoring, including ankle monitors, smartphone applications, and any other tool used to track location;
- Ending civil asset forfeiture;
- Abolishing mandatory minimum sentencing laws;
- Ending like sentences;
- Abolishing the “three strikes” law;
- Developing a time-bound plan to close all federal prisons and immigration detention centers;
- Repealing federal laws that criminalize human movement and border entry;
- Further repealing and replacing the 1994 Violent Crime Control and Law Enforcement Act with non-carceral, non-punitive investments in communities; and
- Decriminalizing and retroactively expunged drug offenses.

## **2. Investing in New Approaches to Community Safety Utilizing Funding Incentives**

The proposed legislation would create federal grant programs that incentivize decarceration and subsidize non-punitive, community-led approaches to public safety. Such grants will:

- Make grants to local jurisdictions so that they can make and implement tailored plans to decarcerate their jails and/or defund their police forces;
- Offer a 50% federal match for projected savings when States and/or local jurisdictions close detention facilities, including (but not limited to) local jails, State prisons, and youth prisons; and
- Incentivize State, tribal, and local governments to make specified changes that shrink their criminal-legal systems and, in return, provide federal funding to make non-punitive, non-carceral, participatory investments in communities.
- State, tribal, and local policy changes incentivized under the grant programs include, but are not limited to, the following:
  - Banning pretextual stops and “consent” searches;
  - Removing police, armed security, metal detectors, and other surveillance equipment from schools and government offices that provide social services;
  - Abolishing State gang databases;
  - Eliminating all fees and surcharges within the criminal-legal system and forgiving outstanding court debt, reducing a financial burden that falls disproportionately on Black women;
  - Decriminalizing and retroactively expunging State drug convictions;
  - Categorically eliminating misdemeanor and “pay only” probation;
  - Until ICE and CBP are fully dismantled, ending State and local police entanglement with Immigration and Customs Enforcement (ICE), Customs and Border Protection (CBP), and all federal immigration enforcement agencies;
  - Repealing all existing State juvenile offenses; and
  - Banning the use of police agencies as tools of political repression.
- States are selected as recipients of the grant programs, funding must be used to fund non-carceral interventions that improve community safety and are

selected through a participatory process. Selected interventions may include, but are not limited to:

- Transformative justice and healing justice programs;
- Violence interruption and intervention, including in domestic violence situations;
- Abuse interruption, intervention, and prevention;
- Park redevelopment, streetlights, and other infrastructure;
- Neighborhood mediation programs;
- Supportive housing;
- New, accessible methods of processing 911 calls that reduce unnecessary contact between law enforcement and community members;
- Safe passage to schools programs;
- Funding for community-based organizations that provide voluntary, non-coercive health services and healing supports for communities so that they can recover from exposure to violence, abuse, and/or harmful interactions with police; and
- Employment opportunities that benefit formerly incarcerated individuals.

### **3. Allocating New Money to Build Healthy, Sustainable & Equitable Communities for All People**

The legislation would establish a grant to promote educational justice, which:

- Incentivizes jurisdictions to make specified equity-focused policy changes, including:
  - Altering their school funding formulas so that there is funding equity between schools;
  - Creating a clear, time-bound plan for closing all youth detention facilities within the jurisdiction and replacing these facilities with community-based, rehabilitation-focused continua of care;
  - Removing police, School Resource Officers (SROs), ICE, probation, armed security, metal detectors, and other surveillance equipment and practices from schools;
  - Creating a clear, time-bound plan for ensuring that all communities have public access to safe, clean water for housing, drinking, and food production;
  - Creating a clear, time-bound plan for ensuring that all communities have access to breathable air within EPA safety limits; and
  - Creating a clear, time-bound plan for meeting 100% of the State power demand using clean, renewable, and zero-emission energy sources.
- Provides resources for programs and investments that include, but are not limited to:
  - Developing curricula that examine the political, economic, and social impacts of colonialism, genocide against indigenous people, and slavery;
  - Providing voluntary, non-coercive wraparound services that meet students' social, emotional, and physical needs;
  - Promoting innovative programming to better support foster youth, as well as the children of incarcerated parents;
  - Providing free, high-quality health services at schools and/or at nearby student- and family-focused centers, which services include reproductive body autonomy;

- Providing full and free access for all people, including those who are undocumented, currently incarcerated, and formerly incarcerated, to a lifetime education;
  - Providing free public transportation to students; and
  - Modernizing, renovating, or repairing facilities used by public schools.
  - Subsidizing community-owned sustainable energy solutions, including projects by community-based nonprofit organizations;
  - Funding climate resilience in communities so that they can prepare for climate change-fueled disasters (such as hurricanes, floods, and wildfires) that are exacerbated by human fossil fuel consumption; and
  - Funding to support, build, preserve, and restore cultural assets and sacred sites—especially sites and land belonging to the Indigenous community.
- Establish a competitive grant to promote health and family justice, which:
    - Incentivizes jurisdictions to make specified equity-focused policy changes, such as:
      - Expanding Medicaid as offered under the Affordable Care Act without work requirements or any burdensome administrative requirements during enrollment;
      - Creating alternatives to terminating parental rights, including guardianship arrangements, and procedures for reinstating parental rights;
      - Eliminating State laws that bar formerly incarcerated people from serving as guardians to their own children or others in their community; and
      - Ensuring all communities have convenient access to sources of healthy food.
    - Provide resources for programs and investments that include, but are not limited to:
      - Food cooperatives and urban gardens;
      - Paid parental and sick leave;
      - Comprehensive, high-quality child and elder care; and
      - The creation of comprehensive health centers that offer culturally competent services for all people, including services related to reproductive health.
    - Establish a competitive grant to promote economic justice, which incentivizes States to make specified equity-focused policy changes, such as:
      - Valuing the labor of Black and Brown women by extending employment protections for workers—including domestic workers and farm workers—who are in industries that are not appropriately regulated;
      - Establishing the right for workers, in public and private sectors, to organize, especially in “On Demand Economy” jobs; and
      - Establishing a living wage, pegged to inflation, and eliminating the subminimum tipped wage.
    - Provide resources for programs and investments that include, but are not limited to:

- Establishing job programs that specifically target the most economically disadvantaged individuals, including groups that disproportionately include Black cis- and trans women, formerly incarcerated people, undocumented people, and disabled people;
- Pilot programs for universal basic income;
- “Baby bonds” programs, including a preference for communities that were specifically targeted by redlining
- Start-up funds for establishing worker-owned cooperatives and businesses that are being started by individuals who are formerly incarcerated.
- Establish a competitive Housing & Infrastructure Grant Program that:
  - Incentivizes jurisdictions to make specified equity-focused policy changes, such as:
    - Authorizing State funds to expand the affordable housing supply; and
    - Change local zoning laws so as to allow multifamily unit construction and ban exclusionary zoning laws.
  - Provide resources for programs and investments that include, but are not limited to:
    - Modernizing and expanding the stock of affordable housing;
    - Providing quality assisted housing;
    - Creating tax-relief programs to help individuals who are facing potential displacement as the result of rapidly increasing home values (i.e., gentrification); and
    - Supporting the development of Community Land Trusts.
- Make direct federal investments in equity, which include:
  - A federal commission that proposes changes to tax policy, which will dramatically increase racial and economic equity;
  - A universal child allowance;
  - A program that provides assistance with down payments and closing costs—specifically for those households that rent or live in historically redlined communities;
  - Land grant programs in cities experiencing economic decline and/or hyper-vacancies;
  - A program at the United States Department of Agriculture, which will forgive the debt of Black farmers who were impacted by previous United States Department of Agriculture discrimination;
  - Tools to promote environmental justice, including an Equity Impact Mapping Initiative & Equity Screen and a Green Infrastructure Program; and
  - Federal programs to better support successful reentry.

#### **4. Holding Officials Accountable & Enhancing Self-Determination of Black Communities**

The legislation would require Congress to acknowledge and address the lasting harms that it has caused, specifically through:

- Passing H.R.40 (“Commission to Study Reparation Proposals for African-Americans Act”); and
- Establishing commissions that design reparations for mass criminalization—including the War on Drugs, the criminalization of prostitution, and police

violence; border violence; and the systemic violation of the U.S. Government's treaty obligations to Tribal nations.

- Ensure democratic, fair, and secure voting processes that are free from racial discrimination and voter suppression in every State, specifically through measures that include:
  - Enfranchising all formerly and presently incarcerated people in federal elections;
  - Creating a public financing program for campaigns that are powered by small dollar contributions;
  - Incentivizing States to increase voter turnout;
- Incentivizing States to pass laws that expand voting access, including laws that:
  - Enfranchise all formerly and presently incarcerated people for State and local elections; and
  - Allowing local and State resident voting for undocumented people.
- Increase accountability for federal officials and police officers who have committed harms, specifically by measures that include:
  - Guaranteeing a private right of action for recovering damages when a federal official has committed a constitutional violation; and
  - Creating a grant program that offers States grant dollars if they strengthen mechanisms to hold police officers accountable when they have committed harm.

The legislation has yet to be introduced by a current member of the United States Congress or Senate.

#### FINANCIAL IMPLICATIONS

None.

#### ENVIRONMENTAL SUSTAINABILITY

Protecting our communities during this climate and health crisis is an act of environmental sustainability.

#### CONTACT PERSONS

Cheryl Davila  
Councilmember District 2  
510.981.7120  
[cdavila@cityofberkeley.info](mailto:cdavila@cityofberkeley.info)

#### ATTACHMENTS:

1. Resolution



RESOLUTION NO. ##,###-N.S.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY, CALIFORNIA,  
REQUESTING THE UNITED STATES HOUSE OF REPRESENTATIVES AND/OR SENATE  
TO INTRODUCE THE "BREATHE ACT"

WHEREAS, The BREATHE Act is proposed legislation by the Movement for Black Lives Electoral Justice Project to get the United States House of Representatives to introduce it in a form of a bill. The proposed legislation contains 4 parts: (1) Divesting Federal Resources from Incarceration and Policing & Ending Criminal-Legal System Harms; (2) Investing in New Approaches to Community Safety Utilizing Funding Incentives; (3) Allocating New Money to Build Healthy, Sustainable & Equitable Communities for All People; (4) Holding Officials Accountable & Enhancing Self-Determination of Black Communities.

WHEREAS, The BREATHE Act would divest Federal Resources from Incarceration and Policing & Ending Criminal-Legal System Harms. The proposed legislation would eliminate federal programs and agencies used to finance and expand the U.S. criminal-legal system, such as the Department of Defense program, the Edward Byrne-Justice Assistance Grant Program, Community Oriented Policing Services, the Drug Enforcement Administration, and Immigration and Customs Enforcement. The legislation would ensure that non-punitive, non-carceral elements of these programs are identified so that they can be transferred to another funding source. Make recommendations to dramatically reduce the Department of Defense budget. The legislation directly makes changes to the federal criminal-legal system, including changes to the

policing, prosecution, sentencing, and jailing practices that have disproportionately criminalized Black and Brown communities, LGBTQIA people, Indigenous people, and disabled people.

Specific changes include, but are not limited to:

- Elimination of surveillance tactics that are disproportionately used to target Black, Brown, and Muslim communities by prohibiting predictive policing, racial recognition technologies, drones, and similar tools;
- Eliminating the use of electronic monitoring, including ankle monitors, smartphone applications, and any other tool used to track location;
- Ending civil asset forfeiture;
- Abolishing mandatory minimum sentencing laws;
- Ending like sentences;
- Abolishing the “three strikes” law;
- Developing a time-bound plan to close all federal prisons and immigration detention centers;
- Repealing federal laws that criminalize human movement and border entry;
- Further repealing and replacing the 1994 Violent Crime Control and Law Enforcement Act with non-carceral, non-punitive investments in communities; and
- Decriminalizing and retroactively expunged drug offenses.

WHEREAS, The BREATHE Act would invest in New Approaches to Community Safety Utilizing Funding Incentives. The proposed legislation would create federal grant programs that incentivize decarceration and subsidize non-punitive, community-led approaches to public safety. Such grants will:

- Make grants to local jurisdictions so that they can make and implement tailored plans to decarcerate their jails and/or defund their police forces;
- Offer a 50% federal match for projected savings when States and/or local jurisdictions close detention facilities, including (but not limited to) local jails, State prisons, and youth prisons; and
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- State, tribal, and local policy changes incentivized under the grant programs include, but are not limited to, the following:
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  - Removing police, armed security, metal detectors, and other surveillance equipment from schools and government offices that provide social services;
  - Abolishing State gang databases;
  - Eliminating all fees and surcharges within the criminal-legal system and forgiving outstanding court debt, reducing a financial burden that falls disproportionately on Black women;
  - Decriminalizing and retroactively expunging State drug convictions;
  - Categorically eliminating misdemeanor and “pay only” probation;
  - Until ICE and CBP are fully dismantled, ending State and local police entanglement with Immigration and Customs Enforcement (ICE), Customs and Border Protection (CBP), and all federal immigration enforcement agencies;
  - Repealing all existing State juvenile offenses; and

- Banning the use of police agencies as tools of political repression.
- States are selected as recipients of the grant programs, funding must be used to fund non-carceral interventions that improve community safety and are selected through a participatory process. Selected interventions may include, but are not limited to:
  - Transformative justice and healing justice programs;
  - Violence interruption and intervention, including in domestic violence situations;
  - Abuse interruption, intervention, and prevention;
  - Park redevelopment, streetlights, and other infrastructure;
  - Neighborhood mediation programs;
  - Supportive housing;
  - New, accessible methods of processing 911 calls that reduce unnecessary contact between law enforcement and community members;
  - Safe passage to schools programs;
  - Funding for community-based organizations that provide voluntary, non-coercive health services and healing supports for communities so that they can recover from exposure to violence, abuse, and/or harmful interactions with police; and
  - Employment opportunities that benefit formerly incarcerated individuals.

WHEREAS, The BREATHE Act allocates new money to build Healthy, Sustainable & Equitable Communities for All People. The proposed legislation would establish a grant to promote educational justice, which:

- Incentivizes jurisdictions to make specified equity-focused policy changes, including:
  - Altering their school funding formulas so that there is funding equity between schools;
  - Creating a clear, time-bound plan for closing all youth detention facilities within the jurisdiction and replacing these facilities with community-based, rehabilitation-focused continua of care;
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  - Developing curricula that examine the political, economic, and social impacts of colonialism, genocide against indigenous people, and slavery;
  - Providing voluntary, non-coercive wraparound services that meet students' social, emotional, and physical needs;
  - Promoting innovative programming to better support foster youth, as well as the children of incarcerated parents;

- Providing free, high-quality health services at schools and/or at nearby student- and family-focused centers, which services include reproductive body autonomy;
  - Providing full and free access for all people, including those who are undocumented, currently incarcerated, and formerly incarcerated, to a lifetime education;
  - Providing free public transportation to students; and
  - Modernizing, renovating, or repairing facilities used by public schools.
  - Subsidizing community-owned sustainable energy solutions, including projects by community-based nonprofit organizations;
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  - Funding to support, build, preserve, and restore cultural assets and sacred sites—especially sites and land belonging to the Indigenous community.
- Establish a competitive grant to promote health and family justice, which:
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    - Provide resources for programs and investments that include, but are not limited to:
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    - Establish a competitive grant to promote economic justice, which incentivizes States to make specified equity-focused policy changes, such as:
      - Valuing the labor of Black and Brown women by extending employment protections for workers—including domestic workers and farm workers—who are in industries that are not appropriately regulated;
      - Establishing the right for workers, in public and private sectors, to organize, especially in “On Demand Economy” jobs; and
      - Establishing a living wage, pegged to inflation, and eliminating the subminimum tipped wage.

- Provide resources for programs and investments that include, but are not limited to:
  - Establishing job programs that specifically target the most economically disadvantaged individuals, including groups that disproportionately include Black cis- and trans women, formerly incarcerated people, undocumented people, and disabled people;
  - Pilot programs for universal basic income;
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  - Start-up funds for establishing worker-owned cooperatives and businesses that are being started by individuals who are formerly incarcerated.
- Establish a competitive Housing & Infrastructure Grant Program that:
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    - Providing quality assisted housing;
    - Creating tax-relief programs to help individuals who are facing potential displacement as the result of rapidly increasing home values (i.e., gentrification); and
    - Supporting the development of Community Land Trusts.
- Make direct federal investments in equity, which include:
  - A federal commission that proposes changes to tax policy, which will dramatically increase racial and economic equity;
  - A universal child allowance;
  - A program that provides assistance with down payments and closing costs—specifically for those households that rent or live in historically redlined communities;
  - Land grant programs in cities experiencing economic decline and/or hyper-vacancies;
  - A program at the United States Department of Agriculture, which will forgive the debt of Black farmers who were impacted by previous United States Department of Agriculture discrimination;
  - Tools to promote environmental justice, including an Equity Impact Mapping Initiative & Equity Screen and a Green Infrastructure Program; and
  - Federal programs to better support successful reentry.

WHEREAS, The BREATHE Act would hold Officials accountable & enhance Self-Determination of Black Communities. The proposed legislation would require Congress to acknowledge and address the lasting harms that it has caused, specifically through:

- Passing H.R.40 (“Commission to Study Reparation Proposals for African-Americans Act”); and

- Establishing commissions that design reparations for mass criminalization—including the War on Drugs, the criminalization of prostitution, and police violence; border violence; and the systemic violation of the U.S. Government’s treaty obligations to Tribal nations.
- Ensure democratic, fair, and secure voting processes that are free from racial discrimination and voter suppression in every State, specifically through measures that include:
  - Enfranchising all formerly and presently incarcerated people in federal elections;
  - Creating a public financing program for campaigns that are powered by small dollar contributions;
  - Incentivizing States to increase voter turnout;
- Incentivizing States to pass laws that expand voting access, including laws that:
  - Enfranchise all formerly and presently incarcerated people for State and local elections; and
  - Allowing local and State resident voting for undocumented people.
- Increase accountability for federal officials and police officers who have committed harms, specifically by measures that include:
  - Guaranteeing a private right of action for recovering damages when a federal official has committed a constitutional violation; and
  - Creating a grant program that offers States grant dollars if they strengthen mechanisms to hold police officers accountable when they have committed harm.

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Berkeley, California requests the United States House of Representatives and Senate to introduce legislation known as “The Breathe Act”.

BE IT FURTHER RESOLVED, copies of this resolution are sent to United States Congresswoman Barbara Lee, Alexandria Ocasio-Cortez, Pramila Jayapal, Rashida Tlaib, Ayanna Pressley and Senator Bernie Sanders.

| Upcoming Worksessions – <i>start time is 6:00 p.m. unless otherwise noted</i> |                                                                          |
|-------------------------------------------------------------------------------|--------------------------------------------------------------------------|
| Scheduled Dates                                                               |                                                                          |
| Sept. 29                                                                      | 1. Vision 2050                                                           |
| Oct. 20                                                                       | 1. Update: Berkeley's 2020 Vision<br>2. Undergrounding Task Force Update |
| Jan. 12                                                                       | 1. Update: Zero Waste Priorities<br>2.                                   |
| Feb. 16                                                                       | 1. BMASP/Berkeley Pier-WETA Ferry<br>2.                                  |
| March 16                                                                      | 1.<br>2.                                                                 |

| Unscheduled Workshops                                                                                                                                                                                                                    |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ol style="list-style-type: none"> <li>1. Cannabis Health Considerations</li> <li>2. Presentation from StopWaste on SB 1383</li> <li>3. Berkeley Police Department Hiring Practices (referred by the Public Safety Committee)</li> </ol> |

| Unscheduled Presentations (City Manager)                                                                                                      |
|-----------------------------------------------------------------------------------------------------------------------------------------------|
| <ol style="list-style-type: none"> <li>1. Systems Realignment</li> <li>2. Digital Strategic Plan/FUND\$ Replacement/Website Update</li> </ol> |



|    | <b>City Council Referrals to the Agenda &amp; Rules Committee and Unfinished Business for Scheduling</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
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| 1. | <p><b>47. Amending Chapter 19.32 of the Berkeley Municipal Code to Require Kitchen Exhaust Hood Ventilation in Residential and Condominium Units Prior to Execution of a Contract for Sale or Close of Escrow</b> <i>(Reviewed by Facilities, Infrastructure, Transportation, Environment, and Sustainability Committee) (Referred from the January 21, 2020 agenda)</i></p> <p><b>From: Councilmember Harrison</b></p> <p><b>Recommendation:</b></p> <ol style="list-style-type: none"> <li>1. Adopt an ordinance amending Berkeley Municipal Code (BMC) 19.32 to require kitchen exhaust ventilation in residential and condominium units prior to execution of a contract for sale or close of escrow.</li> <li>2. Refer to the City Manager to develop a process for informing owners and tenants of the proper use of exhaust hoods.</li> </ol> <p><b>Financial Implications:</b> See report</p> <p>Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140</p> <p><i>Note: Referred to Agenda &amp; Rules for future scheduling.</i></p>                                                                                                                                                                                                                                                                                                                                                                                        |
| 2. | <p><b>7. Adopt a Resolution to Upgrade Residential and Commercial Customers to 100% Greenhouse Gas Emissions-Free Electricity Plan and Municipal Accounts to 100% Renewable Plan</b> <i>(Reviewed by the Facilities, Infrastructure, Transportation, Environment &amp; Sustainability Committee) (Referred from the April 21, 2020 agenda)</i></p> <p><b>From: Councilmember Harrison (Author), Mayor Arreguin (Author), Councilmember Robinson (Co-Sponsor), Councilmember Hahn (Co-Sponsor)</b></p> <p><b>Recommendation:</b> Adopt a Resolution to: a. Opt up Berkeley’s municipal accounts to Renewable 100 (100% renewable and 100% greenhouse gas-free) electricity service, and refer the estimated increased cost of \$100,040 to the June 2020 budget process. b. Upgrade current and new Berkeley residential and commercial customer accounts from Bright Choice (&gt;85% GHG-free) to Brilliant 100 (100% GHG-free), except for residential customers in low income assistance programs. The transition would be effective October 1, 2020 for residential customers and January 1, 2021 for commercial customers. c. Provide for yearly Council review of the City’s default municipal, residential, and commercial plans.</p> <p><b>Financial Implications:</b> See report</p> <p>Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140</p> <p><i>Note: Referred to Agenda &amp; Rules for future scheduling.</i></p> |
| 3. | <p><b>25. Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers</b> <i>(Continued from February 25, 2020. Item contains revised and supplemental materials) (Referred from the May 12, 2020 agenda.)</i></p> <p><b>From: City Manager</b></p> <p><b>Recommendation:</b> Adopt a Resolution accepting the Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers submitted pursuant to Chapter 2.99 of the Berkeley Municipal Code.</p> <p><b>Financial Implications:</b> None</p> <p>Contact: Andrew Greenwood, Police, (510) 981-5900; Dave White, City Manager's Office, (510) 981-7000</p> <p><i>Note: Referred to Agenda &amp; Rules for future scheduling.</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |

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| 4. | <p><b>Referral to Schedule a Special City Council Meeting on Ohlone History and Culture</b><br/><b>From: Councilmembers Hahn and Davila</b> (<i>referred from February 25, 2020</i>)<br/><b>Recommendation:</b> Refer to the Agenda &amp; Rules Policy Committee to schedule a Special City Council Meeting of at least one hour in duration immediately prior to a Regular City Council Meeting for representatives of the Ohlone community to present on Ohlone history and culture to provide additional context for the placement of signs stating "Welcome to the City of Berkeley Ohlone Territory" at entrances to our City.<br/><b>Financial Implications:</b> None<br/>Contact: Sophie Hahn, Councilmember, District 5, (510) 981-7150</p> <p><i>Note: moved from the Upcoming Worksessions list to this list for scheduling purposes on June 15, 2020.</i></p> |
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| CITY CLERK DEPARTMENT                                                       |                      |                       |                                         |                   |
|-----------------------------------------------------------------------------|----------------------|-----------------------|-----------------------------------------|-------------------|
| WORKING CALENDAR FOR SCHEDULING LAND USE MATTERS<br>BEFORE THE CITY COUNCIL |                      |                       |                                         |                   |
| Address                                                                     | Board/<br>Commission | Appeal Period<br>Ends | Determination<br>on Appeal<br>Submitted | Public<br>Hearing |
| <b>NOD – Notices of Decision</b>                                            |                      |                       |                                         |                   |
|                                                                             |                      |                       |                                         |                   |
|                                                                             |                      |                       |                                         |                   |
|                                                                             |                      |                       |                                         |                   |
|                                                                             |                      |                       |                                         |                   |
| <b>Public Hearings Scheduled</b>                                            |                      |                       |                                         |                   |
| 1346 Ordway St (legalize additions)                                         | ZAB                  |                       |                                         | 10/13/2020        |
|                                                                             |                      |                       |                                         |                   |
|                                                                             |                      |                       |                                         |                   |
|                                                                             |                      |                       |                                         |                   |
| <b>Remanded to ZAB or LPC</b>                                               |                      |                       |                                         |                   |
|                                                                             |                      |                       |                                         |                   |
|                                                                             |                      |                       |                                         |                   |
|                                                                             |                      |                       |                                         |                   |
| <b>Notes</b>                                                                |                      |                       |                                         |                   |
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|                                                                             |                      |                       |                                         |                   |

9/2/2020



Office of the City Manager

May 6, 2020

To: Honorable Mayor and Members of the City Council

From: *DWR* Dee Williams-Ridley, City Manager

Subject: **Resumption of certain Board and Commission meetings**

As you are aware, on March 12, 2020, I directed that most board and commission meetings be suspended for at least 60 days in order to help minimize the spread of COVID-19. Exceptions can be made if a board or commission has time-sensitive, legally mandated business to complete, subject to approval by the City Manager and Health Officer. On April 13, 2020, the City Council Agenda & Rules Committee recommended that this action remain in effect until it is determined by the City Manager, as the Director of Emergency Services, and the Health Officer that conditions are appropriate to resume meetings, while maintaining the health and safety of the community.

The purpose of this memo is to notify you that as of today, the Health Officer and I are authorizing certain board and commission meetings to resume with a virtual meeting format. In-person board/commission meetings are not authorized until further notice. Board/commission meetings will be held via Zoom, similar to the format being used by the City Council and City Council policy committees that have resumed meetings during the Shelter-in-Place Order.

Resuming certain board/commission meetings is necessary at this time to enable action on a range of time-sensitive issues. Examples include pending land use permit applications (some of which carry legal mandates for action within set time frames), land use policy efforts which are time-sensitive to address the acute housing crisis, and input required for pending tax decisions, such as to the Disaster and Fire Safety Commission regarding tax rates under Measure GG.

Board and commission meetings will be scheduled with enough lead time to allow agendas to be finalized, applicants and interested parties to be contacted, and public hearing notices to be posted. Staff are contacting board members/commissioners to let them know that certain boards/commissions are resuming. Members of the public may also reach out to commission secretaries (contact information is included on each commission webpage) to inquire about dates of future board/commission meetings.

Depending on the board/commission, initial virtual meetings will be scheduled in late May and June. Some commission meetings will take longer than others to schedule, as some of the same staff who are responsible for preparing commission meeting packets and notices are also serving as Disaster Service Workers. We appreciate everyone's patience as we move forward with next steps.

Boards/commissions that are authorized to resume meeting remotely are:

- Ashby and North Berkeley BART Station Zoning Standards Community Advisory Group
- Design Review Committee
- Disaster & Fire Safety Commission
- Fair Campaign Practices Commission
- Homeless Services Panel of Experts
- Housing Advisory Commission (limited to quasi-judicial activities)
- Joint Subcommittee on the Implementation of State Housing Laws
- Landmarks Preservation Commission
- Open Government Commission
- Personnel Board
- Planning Commission
- Police Review Commission
- Zoning Adjustments Board

I will consider authorizing additional boards/commissions to resume meeting on a case-by-case basis.

Web-based platforms allow board members/commissioners, staff, applicants, and members of the public to participate from their respective shelter-in-place locations. Commissioners who do not have access to a computer or internet will be provided with hard copies of all materials and can participate via phone.

Departments are organizing training on online meeting facilitation for staff and commission chairs, and we will hold practice runs to test out the technology.

Please contact me directly with any questions or concerns.

cc: Senior Leadership Team

RESOLUTION NO. 69,331-N.S.

RATIFYING THE RECOMMENDATIONS ISSUED BY THE DIRECTOR OF EMERGENCY SERVICES AND THE PUBLIC HEALTH OFFICER REGARDING MEETINGS OF BERKELEY LEGISLATIVE BODIES IN RESPONSE TO THE COVID-19 (NOVEL CORONAVIRUS) PANDEMIC

WHEREAS, on March 3, 2020, pursuant to Berkeley Municipal Code section 2.88.040, the City Manager, serving as the Director of Emergency Services, proclaimed the existence of a local emergency; and

WHEREAS, the proclamation was warranted by virtue of the extreme peril to the safety of persons and property in the City caused by pandemic in the form of the global spread of a severe acute respiratory illness caused by a novel (new) coronavirus ("COVID-19"), including confirmed cases in California and the San Francisco Bay Area, and presumed cases in Alameda County prompting the County to declare a local health emergency; and

WHEREAS, the proclamation of the Director of Emergency Services was ratified by the City Council on March 10, 2020; and

WHEREAS, the continued spread of COVID-19 and increase in community transmission cases in surrounding counties warrant further measures be taken by the City to protect the community; and

WHEREAS, the Public Health Officer has issued guidelines for limiting mass gatherings; and

WHEREAS, certain limitations on the meetings of legislative bodies in the City of Berkeley is warranted; and

WHEREAS, the continued essential functions of the City and certain legislative bodies must continue for time-sensitive, legally mandated actions; and

WHEREAS, the Director of Emergency Services presented recommendations to the Agenda & Rules Committee on March 12, 2020 regarding the meetings of legislative bodies; and

WHEREAS, the Agenda & Rules Committee recommended that said recommendations be forwarded to the City Council for acknowledgement and ratification.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the following recommendations issued by the Director of Emergency Services and the Public Health Officer regarding limitations and practices for legislative bodies of the City of Berkeley are hereby acknowledged and ratified:



## Section 1. Boards and Commissions

Commissions listed below may continue to meet only if they have time-sensitive, legally mandated business to complete, as determined by the Director of Emergency Services. The City may consider teleconferencing for these commissions, if feasible.

Design Review Committee  
Fair Campaign Practices Commission  
Housing Advisory Commission (limited to quasi-judicial activities)  
Joint Subcommittee on the Implementation of State Housing Laws  
Landmarks Preservation Commission  
Open Government Commission  
Personnel Board  
Planning Commission  
Police Review Commission  
Zoning Adjustments Board

Commissions in Category B shall not meet for a period of 60 days. This will be re-evaluated at the Agenda & Rules Committee meeting on April 13, 2020. A Commission in Category B may convene a meeting if it has time-sensitive, legally-mandated business to complete, as determined by the Director of Emergency Services.

### Category B

Animal Care Commission  
Cannabis Commission  
Civic Arts Commission  
Children, Youth, and Recreation Commission  
Commission on Aging  
Commission on Disability  
Commission on Labor  
Commission on the Status of Women  
Community Environmental Advisory Commission  
Community Health Commission  
Disaster and Fire Safety Commission  
Elmwood Business Improvement District Advisory Board  
Energy Commission  
Homeless Commission  
Homeless Services Panel of Experts  
Housing Advisory Commission  
Human Welfare and Community Action Commission  
Measure O Bond Oversight Committee  
Mental Health Commission  
Parks and Waterfront Commission  
Peace and Justice Commission  
Public Works Commission  
Solano Avenue Business Improvement District Advisory Board  
Sugar-Sweetened Beverage Product Panel of Experts

Transportation Commission  
Youth Commission  
Zero Waste Commission  
Loan Administration Board

Section 2. City Council Policy Committees

The Agenda & Rules Committee and the Budget & Finance Committee may continue to meet to fulfill their legislative and advisory responsibilities. All other Policy Committees (Facilities, Infrastructure, Transportation, Environment & Sustainability, Public Safety, Land Use, Housing & Economic Development, and Health, Life Enrichment Equity & Community) are suspended indefinitely. The 120-day deadline to consider an item will be tolled during the suspension of business.

Section 3. City Council


For City Council meetings, the City will continue to advise and implement social distancing by limiting the capacity of the Council Chambers, providing an overflow room, attempting to limit the duration of the meeting, only conducting essential business, and limiting or suspending ceremonial items. The City will adhere to and implement the provisions of the Governor's Executive Order #N-25-20 related to the Brown Act and the utilization of technology to facilitate participation.

The foregoing Resolution was adopted by the Berkeley City Council on March 17, 2020 by the following vote:

Ayes: Bartlett, Davila, Droste, Hahn, Harrison, Kesarwani, Robinson, Wengraf, and Arreguin.

Noes: None.

Absent: None.

  
\_\_\_\_\_  
Jesse Arreguin, Mayor

Attest:   
\_\_\_\_\_  
Mark Numalville, City Clerk





Office of the City Manager

CONSENT CALENDAR  
July 21, 2020

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Timothy Burroughs, Director, Planning and Community Development  
 Subject: Referral Response: Expanding community engagement within work to address Climate Impacts

RECOMMENDATION

1. Refer to the City Manager to continually advance engagement around community-driven, equitable climate solutions, and to seek external resources to enable increased community engagement of impacted communities around equitable climate solutions; and
2. Refer to the Agenda Committee a revision to the Council Rules of Procedures to update the Environmental Sustainability section of City Council items and staff reports as "*Environmental Sustainability and Climate Impacts*."

FISCAL IMPACTS OF RECOMMENDATION

There are no fiscal impacts for the first recommendation to continue engagement around equitable climate solutions and to seek external funding. The Office of Energy and Sustainable Development will continue to center equity within existing programs, using existing staff resources.

The second recommendation to update to City Council reports to include consideration of climate impacts would require additional time from existing staff to develop guidelines and provide training for all Departments on how to analyze and respond to the revised *Environmental Sustainability and Climate Impacts* section. These tasks would need to be integrated into staff's current work plan and would impact other projects.

CURRENT SITUATION AND ITS EFFECTS

This referral response builds on the momentum of the Climate Emergency Declaration, adopted by the City Council on June 12, 2018, by augmenting current efforts to reduce community-wide greenhouse gas emissions, raise awareness of climate impacts, and help the community adapt to a changing climate.

The Office of Energy and Sustainable Development is committed to equitable community engagement and policies. Recent and current activities include:

- In 2018 Berkeley received a grant to host a training on **Equitable Community-driven Climate Solutions with Movement Strategies** that focused on the continuum of Community Engagement, through collaboration and shared decision-making between local government staff and the community, with the aim of co-creating equitable climate preparedness solutions. See Attachment 3 for Continuum of Community Engagement adapted from King County, Washington and the International Association of Public Participation.
- Berkeley was chosen as one of eight leading cities to receive free technical assistance valued at more than \$50,000, with an additional \$2,000 for community engagement stipends through the **Building Electrification Initiative**. That effort analyzed opportunities and barriers to building electrification with an equity analysis, including spatial analysis of social vulnerabilities and environmental risk factors, and interviews with organizations serving low-income communities, limited English-speakers, people of color, and people with disabilities. Current work includes research on ways to support both affordable housing and building electrification strategies, local workforce development, and economic inclusion for marginalized communities. This work is being used to supplement the Existing Building Electrification Strategy.
- In 2018 Council provided funding for consultants to develop a **Berkeley Existing Building Electrification Strategy** which will provide recommendations for the highest value short- and long-term strategies to electrify all of Berkeley's existing buildings, in an equitable way, as soon as possible. Staff included requirements for equity expertise and deliverables as part of the Request for Proposals and in the scope of work. The consultant team developing the Strategy consists of Rincon Associates, Rocky Mountain Institute and the Ecology Center, with the latter serving as the lead on equity. The team is evaluating policy options that address all buildings in Berkeley in an inclusive approach that advances equity and prioritizes multiple benefit solutions to improve health, comfort and affordability.
- The **Electric Mobility Roadmap** included the Greenlining Institute as a paid strategic equity advisor throughout its development. Community organizations who work with underserved communities, including low-income populations, communities of color, and people with disabilities, were interviewed as part of the early needs assessment phase, and became partners in the development of draft strategies and actions, and implementation. This work led to "Equity in Access to Electric Mobility" being one of the four goals of the Roadmap with recommendations that includes collaboration on an equity pilot project and workforce development to support opportunities for people with barriers to employment.

Although communities of color, renters, seniors, students, people with disabilities, and low-income residents are disproportionately impacted by climate change, they are often marginalized in the development of climate solutions. These impacted communities may face multiple competing priorities and other barriers, such as language and lack of access to resources, which can limit their ability to meaningfully participate in creating and implementing climate solutions. Community-driven engagement aims to strengthen the capacity of individuals and organizations to self-advocate and identify needs, priorities and solutions. It also emphasizes meaningful participation in the decision-making process of policies and programs.

Prior to the COVID-19 pandemic, staff developed a scope of work and budget for enhancing community capacity for engagement. A draft Scope of Work and a 2-year budget of \$236,000 was developed to support dedicated staffing for the Berkeley Climate Action Coalition (BCAC), co-convened by the Ecology Center and the City of Berkeley Office of Energy & Sustainable Development, to coordinate an engagement plan (see Attachment 2). However, given the uncertainty surrounding the local economy, impacts on the City's budget, and safety implications of in-person community engagement due to COVID-19, staff is not recommending allocating funding for this proposal at this time.

In lieu of a funding request to enhance the work of BCAC, staff will continue to apply an equity lens to policy development and implementation and support a wide range of community engagement efforts with existing staff resources. Staff will seek additional resources and apply for external grant funding to more deeply engage with communities most negatively affected by increasingly frequent climate-related events, such as extreme heat, exposure to wildfire smoke, public safety power shutoffs, and flooding, and by the health and economic impacts of COVID-19. OESD staff will also leverage partnerships with East Bay Community Energy (EBCE) and the Bay Area Regional Energy Network (BayREN) to enhance outreach on issues such as electricity rate changes and programs targeted to reduce energy costs for low-income community members.

Meaningful engagement is also critical to the creation of community-driven solutions that are a core principle for the equity programs being recommended through the Electric Mobility Roadmap, and other programs for building electrification as recommended in the Existing Building Electrification Strategy. Due to the unknown future prospects of public gatherings, it is challenging to effectively engage with frontline communities in traditional ways (e.g., in-person convenings and workshops). Remote or virtual engagement can heighten the digital divide and may only be available to those who are not dealing with urgent health and economic challenges. To overcome these challenges, staff will explore innovative, safe and accessible engagement strategies to reach impacted communities while limits on public gatherings persist, and will plan for opportunities for innovative, safe in-person community engagement when that approach can safely resume.

### **Environmental Sustainability and Climate Impacts Section of Council Reports**

A revision to the current “Environmental Sustainability” section of City Council reports to include “*Environmental Sustainability and Climate Impacts*” would enhance efforts started in 2014, when the current “Environmental Sustainability” section was added to Council report templates. The “Environmental Sustainability” section was implemented through the development of guidelines, instructional materials, staff training throughout the City, and a six-month period of review of all Council reports by staff in the Office of Energy & Sustainable Development. These guidelines and training are now integrated into Council Report Writing Training provided to staff by the City Clerk’s Office. Staff would want to update and augment that training to ensure that a newly revised Council report template is effective and meaningful.

Equity-focused, climate-driven community engagement and increasing consideration of climate impacts in Council reports supports a number of Strategic Plan goals, including: creating a resilient, safe, connected, and prepared city; championing and demonstrating social and racial equity; and being a global leader in addressing climate change, advancing environmental justice, and protecting the environment.

### **BACKGROUND**

On January 21, 2020, City Council approved a referral sponsored by Councilmembers Davila and Bartlett, which referred to the City Manager:

- To look at how to improve and increase External Community Engagement – including funding for regular on-going town halls or neighborhood assemblies for external community engagement, and collaboration to engage the community and allow for input on new policies and programs which affect marginalized and front-line communities.
- To report back and identify funding resources and funding needed to adequately implement the increased engagement efforts, including different organizational structure options, and to make recommendations for funding.
- To require that all City Council items and staff reports include Climate Impacts in addition to Environmental Sustainability.

Since 2012, BCAC has been the City’s main vehicle for climate engagement. Its membership of nearly 1,000 people includes residents, nonprofits, neighborhood groups, faith-based organizations, schools, businesses, and UC Berkeley. From 2012-2016, BCAC received funding from the San Francisco Foundation and the City of Berkeley that supported quarterly convenings and workshops on a variety of topics such as climate change and health, intergenerational climate change, clean transportation and energy, and climate justice. Over the years, BCAC has supported a variety of volunteer-led working groups on topics including land use, water, transportation, community choice energy, electrification, and environmental health, and BCAC



continues to play an active role in large public events such as the annual Ride Electric event and 2019 East Bay Electrification Expo.

### ENVIRONMENTAL SUSTAINABILITY

The development of community-driven equitable climate solutions is critical to the success of the Climate Action Plan and the City's Resilience Strategy, and responds to the Climate Emergency Declaration. The engagement of marginalized and frontline communities advances the goals of climate mitigation and adaptation, as well as resilience by advancing racial equity and accelerating access to reliable and clean energy and transportation.

### RATIONALE FOR RECOMMENDATION

Engagement with marginalized communities addresses historical and structural racism and economic inequality. This work requires an approach that allows community members to explore how climate change impacts them and to collaborate in the creation of solutions to meet their needs. Deep and authentic community engagement is best accomplished through in-person meetings and events. Until such events can resume, staff are working to engage with stakeholders from impacted communities through virtual means, with a focus on equity and inclusion.

### ALTERNATIVE ACTIONS CONSIDERED

City Council could choose to fund all or part of the attached Scope of Work to create non-virtual community engagement strategies while limits on public gatherings persist, and move to interactive, in-person events when they are deemed safe. By partnering with trusted external organizations like BCAC and the Ecology Center, the City could build on existing community relationships, strengthen capacity of community members and organizations to engage on climate issues, and leverage outreach efforts.

### CONTACT PERSON

Billi Romain, Sustainability Manager, Planning Department – Office of Energy & Sustainable Development, (510) 981-7432

### Attachments:

- 1 Original Referral Report from January 21, 2020:
- 2 Ecology Center Berkeley Climate Action Coalition Draft Scope of Work
- 3 Continuum of Community Engagement



Cheryl Davila  
Councilmember  
District 2

## REVISED AGENDA MATERIAL

**Meeting Date:** January 21, 2020

**Item Description:** Short Term Referral to the City Manager: 1. Improve and increase External Community Engagement; 2. Identify the funding resources needed to adequately implement number 1; and 3. Implement and require all City Council items and staff reports include Climate Impacts in addition to Environmental Sustainability

**Submitted by:** Councilmember Cheryl Davila

Updated agenda report and resolution to reflect the actions from December 5, 2019 Council Facilities, Infrastructure, Transportation, Environment and Sustainability Committee meeting:

Send the item, as amended, back to the City Council with a Positive Recommendation and to keep the first recommendation, the establishment of a new department, in the committee as a discussion item. Also, the committee took action to amend the recommendations:

1. Short Term Referral to the City Manager: to look at how to improve and increase External Community Engagement – including funding for regular on- going town halls or neighborhood assemblies for external community engagement and collaboration to engage the community and allow for input on new policies and programs which affect “marginalized and front-line communities.”
2. Short Term Referral to the City Manager to report back and identify funding resources and funding needed to adequately implement number 1, including different organizational structure options; and recommendations for funding.
3. Implement and require all City Council items, and staff reports include Climate Impacts in addition to Environmental Sustainability.



Cheryl Davila  
Councilmember  
District 2

CONSENT CALENDAR

January 21, 2020

~~December 3, 2019~~

To: Honorable Mayor and Members of the City Council

From: Councilmembers Cheryl Davila and Ben Bartlett

Subject: Short Term Referral to the City Manager: 1. Improve and increase External Community Engagement; 2. Identify the funding resources needed to adequately implement number 1; and 3. Implement and require all City Council items and staff reports include Climate Impacts in addition to Environmental Sustainability

~~Short Term Referral to the City Manager on how to establish a New Department: Climate Emergency Mobilization Department within 90 day~~

RECOMMENDATION

Adopt the following amended actions with a positive recommendation from the Council Facilities, Infrastructure, Transportation, Environment and Sustainability (FITES) Committee:

1. Short Term Referral to the City Manager: to look at how to improve and increase External Community Engagement – including funding for regular on- going town halls or neighborhood assemblies for external community engagement and collaboration to engage the community and allow for input on new policies and programs which affect “marginalized and front-line communities.”

~~Short Term Referral to the City Manager on how to establish a New Department: Climate Emergency Mobilization Department within 90 days with the following actions:~~

~~1. Establishment of a new department – Create a Climate Emergency Mobilization Department (CEMD) and transition existing city staff (current Chief Sustainability and Resilience Officers) into the new department. The CEMD is proposed to have oversight authority of existing departments and boards regarding planning and coordination of the City’s response to climate change, including public education and outreach. In addition, the CEMD would measure and track ongoing greenhouse gas emissions and pollutants, develop an annual climate emissions budget and identify grant funding.~~

~~2. Short Term Referral to the City Manager to report back and identify funding resources and funding needed to adequately implement number 1, including different organizational structure options; and recommendations for funding.~~

~~2. External Community Engagement – Provide a timeline for regular on-going town halls or neighborhood assemblies for external community engagement and collaboration to engage the community and allow for input on new policies and programs which affect “marginalized and front-line communities.” As part of this process, the proposal further recommends that community capacity building in the form of training and education be provided, and that potential pilot projects be considered which could be tested in these communities.~~

~~3. Implement and require all City Council items, and staff reports include Climate Impacts in addition to Environmental Sustainability.~~

~~3. A Report from the City Manager within 90 days regarding: The number of positions to adequately implement and operate the CEM department; and recommendations for funding in the upcoming fiscal year budget.~~

### POLICY COMMITTEE RECOMMENDATION

On December 5, 2019, the Facilities, Infrastructure, Transportation, Environment, and Sustainability Committee adopted the following action: M/S/C (Harrison/Robinson) to send the item, as amended, back to the City Council with a Positive Recommendation and to keep the first recommendation, the establishment of a new department, in the committee as a discussion item.

Amend the recommendation to read as follows:

1. Short Term Referral to the City Manager: to look at how to improve and increase External Community Engagement – including funding for regular on-going town halls or neighborhood assemblies for external community engagement and collaboration to engage the community and allow for input on new policies and programs which affect “marginalized and front-line communities”.
2. A Report from the City Manager within 90 days regarding: The resources needed to adequately implement these efforts, including different organizational structure options; and recommendations for funding.
3. Recommend that all staff reports address climate change in addition to environmental sustainability.

Vote: All Ayes.

### BACKGROUND

The Berkeley City Council unanimously passed the Climate Emergency Declaration June 12, 2018. Since then, Richmond, Oakland, Hayward, Alameda, El Cerrito, Chico, Fairfax, Healdsburg, Davis, Arcata, Cloverdale, Malibu, Petaluma, San Jose, San Mateo County, Santa Cruz City & County, Sonoma County and Windsor have also passed Climate Emergency Declarations. There are over 48 cities throughout the United States who have declared, as well as over 1,146 governments and 22 countries throughout the world. The declaration is the first step.

As unprecedented winter wildfires are impacting our City with fierce urgency, we must begin to prepare for our future in these times of climate disruption. Without an immediate and drastic change from the status quo, humans will cause irreversible and ever-worsening damage to the Earth’s climate. To act too late, or to be too cautious in our vision and do too little, carries the risk of condemning the City and its residents to an increasingly uninhabitable climate and potentially catastrophic economic losses caused by worsening disasters.

While the wildfires and mudslides demonstrate that the climate emergency threatens everyone, the disasters wrought by an abruptly destabilizing climate have so far most devastatingly impact lower-income communities of color first and worst. Drought, famine, and instability have devastated countries in the Global South. Millions of climate refugees have already left their homes in search of a safe place to live. In the United States, we have seen this after hurricanes Katrina, Sandy, Harvey, Irma and Maria how environmentally and economically vulnerable people have been left to fend for themselves.

The City must therefore aggressively move to reduce and remove greenhouse gas emissions, adapt and restore ecosystems by rapidly adopting legislation to mandate such efforts Citywide and by doing so in such a way that lower-income and frontline communities of color benefit first from mitigation and adaptation funds. The City can thereby create a model for other cities to follow and use its global climate leadership standing to lead the way. By doing so, Berkeleyans can trigger a global mobilization to restore a safe climate, thereby creating the conditions for a future, not of chaos and misery, but of community and dignity.

At the December 5, 2019 meeting of the Facilities, Infrastructure, Transportation, Environment and Sustainability (FITES) Council Committee, the committee requested to send this item, as amended, back to the City Council with a Positive Recommendation and to keep the first recommendation “the establishment of a new department” in the FITES committee as a discussion item. Also, the committee took action to amend the recommendations: (1) Short Term Referral to the City Manager: to look at how to improve and increase External Community Engagement – including funding for regular on- going town halls or neighborhood assemblies for external community engagement and collaboration to engage the community and allow for input on new policies and programs which affect “marginalized and front-line communities”. (2) Short Term Referral to the City Manager to report back and identify the resources and funding needed to adequately implement these efforts, including different organizational structure options; and recommendations for funding. (3) Implement and require all City Council reports/items, and staff reports include Climate Impacts in addition to Environmental Sustainability.

#### FISCAL IMPACTS OF RECOMMENDATION

To be determined.

#### ENVIRONMENTAL SUSTAINABILITY

The Berkeley City Council unanimously passed the Climate Emergency Declaration in June 2018, it is important, now more than ever to take the next step to insure that we are prepared and ready for the climate crisis we will face.

#### CONTACT PERSON

Cheryl Davila  
Councilmember District 2  
510.981.7120  
[cdavila@cityofberkeley.info](mailto:cdavila@cityofberkeley.info)

#### ATTACHMENTS:

1. Resolution
2. Track changes from original Council item

RESOLUTION NO. XXXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY TO ESTABLISH A  
NEW CITY DEPARTMENT CALLED CLIMATE EMERGENCY MOBILIZATION DEPARTMENT

WHEREAS, The Berkeley City Council unanimously passed the Climate Emergency Declaration  
on June 12, 2018; and

WHEREAS, the cities of Richmond, Oakland, Hayward, Alameda, El Cerrito, Chico, Fairfax,  
Healdsburg, Davis, Arcata, Cloverdale, Malibu, Petaluma, San Jose, San Mateo County, Santa

Cruz City & County, Sonoma County and Windsor have also passed Climate Emergency Declarations; and

WHEREAS, There are over 48 cities throughout the United States who have declared, as well as over 1,146 governments and 22 countries throughout the world. The declaration is the first step; and

WHEREAS, The Climate Emergency Declaration was the first step, and creating the Climate Emergency Mobilization Department is the next step; and

WHEREAS, As unprecedented winter wildfires and ensuing mudslides destroyed parts of our City and region, a climate emergency mobilization of our City has never been more fiercely urgent; and

WHEREAS, Such an effort must end to the maximum extent technically feasible city-wide greenhouse gas emissions in every sector by 2025 and begin a large-scale effort to safely and justly remove carbon from the atmosphere; and

WHEREAS, Without an immediate and drastic change from the status quo, humans will cause irreversible and ever-worsening damage to the Earth's climate; and

WHEREAS, To act too late, or to be too cautious in our vision and do too little, carries the risk of condemning the City and its residents to an increasingly uninhabitable climate and potentially catastrophic economic losses caused by worsening disasters; and

WHEREAS, abnormal wildfires, tornadoes, mudslides and other demonstrate that the climate emergency threatens everyone, the disasters wrought by an abruptly destabilizing climate have so far most devastatingly impacted lower-income communities of color first and worst. Drought, famine, and instability have devastated countries in the Global South; and

WHEREAS, Millions of climate refugees have already left their homes in search of a safe place to live. In the United States, we have seen after Hurricanes Katrina, Sandy, Harvey, Irma and Maria how environmentally and economically vulnerable have been generally left to fend for themselves; and

WHEREAS, The City must therefore aggressively move to reduce and remove greenhouse gas emissions and adapt and restore ecosystems by rapidly adopting legislation to mandate such efforts Citywide and by doing so in such a way that lower-income and frontline communities of color benefit first from mitigation and adaptation funds. The City can thereby create a model for other cities to follow and use its global climate leadership standing to lead the way. By doing so, Berkeleyan can trigger a global mobilization to restore a safe climate, thereby creating the conditions for a future, not of chaos and misery, but of community and dignity; and

At the December 5, 2019 meeting of the Facilities, Infrastructure, Transportation, Environment and Sustainability (FITES) Council Committee, the committee requested to send this item, as amended, back to the City Council with a Positive Recommendation and to keep the first recommendation "the establishment of a new department" in the FITES committee as a discussion item. Also, the committee took action to amend the recommendations: (1) Short Term Referral to the City Manager: to look at how to improve and increase External Community Engagement – including funding for regular on- going town halls or neighborhood assemblies for external community engagement and collaboration to engage the community and allow for input on new policies and programs which affect "marginalized and front-line communities". (2) Short Term Referral to the City Manager to report back and identify the resources and funding needed to adequately implement these efforts, including different organizational structure options; and recommendations for funding. (3) Implement and require all City Council



reports/items, and staff reports include Climate Impacts in addition to Environmental Sustainability.

NOW, THEREFORE IT BE RESOLVED, that the Berkeley City Council directs a Short Term Referral to the City Manager on how to establish a New Department: Climate Emergency Mobilization Department within 90 days with the following actions:

Adopt the following amended actions with a positive recommendation from the Council Facilities, Infrastructure, Transportation, Environment and Sustainability (FITES) Committee:  
1. Short Term Referral to the City Manager: to look at how to improve and increase External Community Engagement – including funding for regular on- going town halls or neighborhood assemblies for external community engagement and collaboration to engage the community and allow for input on new policies and programs which affect “marginalized and front-line communities.”

~~Short Term Referral to the City Manager on how to establish a New Department: Climate Emergency Mobilization Department within 90 days with the following actions:~~

~~1. *Establishment of a new department* – Create a Climate Emergency Mobilization Department (CEMD) and transition existing city staff (current Chief Sustainability and Resilience Officers) into the new department. The CEMD is proposed to have oversight authority of existing departments and boards regarding planning and coordination of the City’s response to climate change, including public education and outreach. In addition, the CEMD would measure and track ongoing greenhouse gas emissions and pollutants, develop an annual climate emissions budget and identify grant funding.~~

~~2. Short Term Referral to the City Manager to report back and identify funding resources and funding needed to adequately implement number 1, including different organizational structure options; and recommendations for funding.~~

~~2. *External Community Engagement* – Provide a timeline for regular on-going town halls or neighborhood assemblies for external community engagement and collaboration to engage the community and allow for input on new policies and programs which affect “marginalized and front-line communities.” As part of this process, the proposal further recommends that community capacity building in the form of training and education be provided, and that potential pilot projects be considered which could be tested in these communities.~~

~~3. Implement and require all City Council items, and staff reports include Climate Impacts in addition to Environmental Sustainability.~~

~~3. *A Report from the City Manager within 90 days regarding:* The number of positions to adequately implement and operate the CEM department; and recommendations for funding in the upcoming fiscal year budget.~~

BE IT FURTHER RESOLVED, that the City Council directs the City Planning Department to report back on opportunities for radical greenhouse gas emissions reductions and carbon drawdown and removal opportunities through the City’s General Plan and Community Plan Updates, including on metrics which can prioritize climate-adaptive land use planning.

BE IT FURTHER RESOLVED, that the City Council directs the City Manager or Designee to report back on opportunities and funding to address climate emergencies and mitigation through existing hazard mitigation programs.

BE IT FURTHER RESOLVED, that the City Council direct the City Clerk to work with the City Manager to include greenhouse gas impact statements and greenhouse gas removal or reduction statements in all relevant Council motions, much as it currently includes fiscal impact statements.



Cheryl Davila  
Councilmember  
District 2

## REVISED AGENDA MATERIAL

**Meeting Date:** January 21, 2020

**Item Description:** Short Term Referral to the City Manager: 1. Improve and increase External Community Engagement; 2. Identify the funding resources needed to adequately implement number 1; and 3. Implement and require all City Council items and staff reports include Climate Impacts in addition to Environmental Sustainability

**Submitted by:** Councilmember Cheryl Davila

Updated agenda report and resolution to reflect the actions from December 5, 2019 Council Facilities, Infrastructure, Transportation, Environment and Sustainability Committee meeting:

Send the item, as amended, back to the City Council with a Positive Recommendation and to keep the first recommendation, the establishment of a new department, in the committee as a discussion item. Also, the committee took action to amend the recommendations:

1. Short Term Referral to the City Manager: to look at how to improve and increase External Community Engagement – including funding for regular on- going town halls or neighborhood assemblies for external community engagement and collaboration to engage the community and allow for input on new policies and programs which affect “marginalized and front-line communities.”
2. Short Term Referral to the City Manager to report back and identify funding resources and funding needed to adequately implement number 1, including different organizational structure options; and recommendations for funding.
3. Implement and require all City Council items, and staff reports include Climate Impacts in addition to Environmental Sustainability.



Cheryl Davila  
Councilmember  
District 2

CONSENT CALENDAR  
January 21, 2020  
~~December 3, 2019~~

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila and Ben Bartlett

Subject: Short Term Referral to the City Manager: 1. Improve and increase External Community Engagement; 2. Identify the funding resources needed to adequately implement number 1; and 3. Implement and require all City Council items and staff reports include Climate Impacts in addition to Environmental Sustainability

~~Short Term Referral to the City Manager on how to establish a New Department: Climate Emergency Mobilization Department within 90 day~~

**RECOMMENDATION**

Adopt the following amended actions with a positive recommendation from the Council Facilities, Infrastructure, Transportation, Environment and Sustainability (FITES) Committee:

1. Short Term Referral to the City Manager: to look at how to improve and increase External Community Engagement – including funding for regular on- going town halls or neighborhood assemblies for external community engagement and collaboration to engage the community and allow for input on new policies and programs which affect “marginalized and front-line communities.”

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- ~~2. Short Term Referral to the City Manager to report back and identify funding resources and funding needed to adequately implement number 1, including different organizational structure options; and recommendations for funding.~~
- ~~2. External Community Engagement – Provide a timeline for regular on-going town halls or neighborhood assemblies for external community engagement and collaboration to engage the community and allow for input on new policies and programs which affect “marginalized and front-line communities.” As part of this process, the proposal further recommends that community capacity building in the form of training and education be provided, and that potential pilot projects be considered which could be tested in these communities.~~
- ~~3. Implement and require all City Council items, and staff reports include Climate Impacts in addition to Environmental Sustainability.~~

~~3. A Report from the City Manager within 90 days regarding: The number of positions to adequately implement and operate the CEM department; and recommendations for funding in the upcoming fiscal year budget.~~

## BACKGROUND

The Berkeley City Council unanimously passed the Climate Emergency Declaration June 12, 2018. Since then, Richmond, Oakland, Hayward, Alameda, El Cerrito, Chico, Fairfax, Healdsburg, Davis, Arcata, Cloverdale, Malibu, Petaluma, San Jose, San Mateo County, Santa Cruz City & County, Sonoma County and Windsor have also passed Climate Emergency Declarations. There are over 48 cities throughout the United States who have declared, as well as over 1,146 governments and 22 countries throughout the world. The declaration is the first step.

As unprecedented winter wildfires are impacting our City with fierce urgency, we must begin to prepare for our future in these times of climate disruption. Without an immediate and drastic change from the status quo, humans will cause irreversible and ever-worsening damage to the Earth's climate. To act too late, or to be too cautious in our vision and do too little, carries the risk of condemning the City and its residents to an increasingly uninhabitable climate and potentially catastrophic economic losses caused by worsening disasters.

While the wildfires and mudslides demonstrate that the climate emergency threatens everyone, the disasters wrought by an abruptly destabilizing climate have so far most devastatingly impact lower-income communities of color first and worst. Drought, famine, and instability have devastated countries in the Global South. Millions of climate refugees have already left their homes in search of a safe place to live. In the United States, we have seen this after hurricanes Katrina, Sandy, Harvey, Irma and Maria how environmentally and economically vulnerable people have been left to fend for themselves.

The City must therefore aggressively move to reduce and remove greenhouse gas emissions, adapt and restore ecosystems by rapidly adopting legislation to mandate such efforts Citywide and by doing so in such a way that lower-income and frontline communities of color benefit first from mitigation and adaptation funds. The City can thereby create a model for other cities to follow and use its global climate leadership standing to lead the way. By doing so, Berkeleyans can trigger a global mobilization to restore a safe climate, thereby creating the conditions for a future, not of chaos and misery, but of community and dignity.

At the December 5, 2019 meeting of the Facilities, Infrastructure, Transportation, Environment and Sustainability (FITES) Council Committee, the committee requested to send this item, as amended, back to the City Council with a Positive Recommendation and to keep the first recommendation "the establishment of a new department" in the FITES committee as a discussion item. Also, the committee took action to amend the recommendations: (1) Short Term Referral to the City Manager: to look at how to improve and increase External Community Engagement – including funding for regular on- going town halls or neighborhood assemblies for external community engagement and collaboration to engage the community and allow for input on new policies and programs which affect "marginalized and front-line communities". (2) Short Term Referral to the City Manager to report back and identify the resources and funding needed to adequately implement these efforts, including different organizational structure options; and recommendations for funding. (3) Implement and require all City Council reports/items, and staff reports include Climate Impacts in addition to Environmental Sustainability.

## FISCAL IMPACTS OF RECOMMENDATION

To be determined.

## ENVIRONMENTAL SUSTAINABILITY

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## **The Ecology Center Community Engagement Proposed Scope of Work for the Berkeley Climate Action Coalition**

**Program Summary:** The success of the City of Berkeley's Climate Action Plan, Resilience Strategy, and response to the Climate Emergency Declaration is dependent on input from and engagement with Berkeley's most vulnerable and climate-impacted communities. Citywide interventions must work for all, and without adequate feedback, the City's responses to the climate threat can exacerbate impacts on the communities least able to bear them. These communities are often the most negatively affected by pollution and climate change impacts, yet rarely have a voice in how to create policies to mitigate and adapt to such adversities. The Ecology Center co-convenes the Berkeley Climate Action Coalition along with the Office of Energy and Sustainable Development, and has long-standing relationships with a diverse array of community organizations.

This program seeks to strengthen the capacity of individuals and organizations from vulnerable, impacted, underserved and low-income communities to identify their own needs, priorities and solutions and to self-advocate for appropriate outcomes within a climate action framework. Equitable outreach is collaborative in nature, and aims to:

- Support leadership development of people from impacted communities to engage on issues of concern related to climate action resilience.
- Create opportunities for community members to explore how climate change impacts them and to generate solution to meet their needs.
- Ensure community members understand City processes and decision points.
- Support partners to be able to engage in City processes in an ongoing fashion.
- Ensure resources for culturally appropriate meeting spaces, facilitation, food, childcare, and translation necessary to achieve these goals.

**Target Population:** People of color, renters, seniors, students, people with disabilities, low-income residents, and other "harder-to-reach" communities most vulnerable to the impacts of climate change and/or historically excluded in the development of climate change and resiliency solutions.

### **Draft Scope of Work:**

- Ongoing community engagement (minimum of 20 activities per year) on topics of concern (see below) that may include meetings with key stakeholders and community organizations' staff members; outreach at facilities serving frontline communities such as senior centers, or onsite at local agencies; and topic-specific working groups.

- At least two public convenings or town hall meetings per year that utilize hands-on, interactive learning components.
  - Public meetings will include, as needed, culturally appropriate meeting spaces, facilitation, food, childcare, and translation
  - Public meetings will be planned in partnership with community organizations serving frontline communities

Engagement and outreach will focus on the intersection of climate **topics of concern** to frontline communities and City climate initiatives:

- Changes in electricity rates from Time of Use (TOU), potential opt-up to more expensive East Bay Community Energy (EBCE) electricity product, and any other potential rate increases and savings opportunities
- Preparing for climate-related heat and smoke events
- Energy assurance during Public Safety Power Shutoff (PSPS) events
- Access to clean, electric mobility options
- Incentive programs for income-qualified residents
- Building electrification: 1) understanding barriers and promoting health benefits and incentive programs; 2) creation of a proposed Resilient Homes Equity Pilot Program for building electrification and efficiency to complement the transfer tax rebate program for low-income home owners and/or renters

**Timeline:** The program will be delivered over a two-year period as follows:

- 1-3 months: relationship, coalition and capacity building
- 3-6 months: identifying priorities, program planning and coordination
- 6-24 months: program implementation

**Provider:** The Ecology Center, a 50-year-old Berkeley organization, deeply rooted in the community, is ideally situated to deliver this outreach program. The Ecology Center, which co-convenes the Berkeley Climate Action Coalition (BCAC) with the City, has long-standing relationships with a variety of local climate organizations. Additionally, through its farmers' markets and food access programs (i.e. Farmers' Market EBT and Market Match), and successful soda tax campaign, the Ecology Center has developed strong alliances with health and human services organizations serving many of Berkeley's frontline communities. Partnering with these organizations is critical as

adverse health impacts are often associated with climate change, and health issues can be an entry point for meaningful engagement.

**Proposed Ecology Center Budget: \$236,000 over 2 years, (\$118,000 per year)**

Annual Breakdown:

- \$75,000 1 FTE Lead Staff (including taxes and benefits)
- \$10,000: Support for partnering community organizations to build capacity to co-host convenings
- \$10,000: Public meeting resources such as childcare, translation, food, etc.
- \$23,000: Administrative overhead

## CONTINUUM OF COMMUNITY ENGAGEMENT

Community engagement is often depicted as a continuum increasing in the level of engagement and partnership from left to right, as shown in the figure below. Within any given planning process, various strategies for community engagement may be employed at different points in time.

| INFORM                                                                                                                                                                                                       | CONSULT                                                                                                                                                                                                                | INVOLVE                                                                                                                                                                                               | SHARED LEADERSHIP                                                                                                                                                                                     | COMMUNITY-DRIVEN                                                                                                                                                                                     |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Local government initiates an effort, coordinates with departments, and uses a variety of channels to inform the community to take action                                                                    | Local government gathers information from the community to inform local government-led interventions                                                                                                                   | Local government engages community members to shape government priorities and plans                                                                                                                   | Community and local government share in decision-making to co-create solutions together                                                                                                               | Community initiates and directs strategy and action with participation and technical assistance from local government                                                                                |
| CHARACTERISTICS OF ENGAGEMENT                                                                                                                                                                                |                                                                                                                                                                                                                        |                                                                                                                                                                                                       |                                                                                                                                                                                                       |                                                                                                                                                                                                      |
| <ul style="list-style-type: none"> <li>Primarily one-way channel of communication</li> <li>One interaction</li> <li>Term-limited to project</li> <li>Addresses immediate need of local government</li> </ul> | <ul style="list-style-type: none"> <li>Primarily one-way channel of communication</li> <li>One to multiple interactions</li> <li>Short to medium-term</li> <li>Shapes and informs local government programs</li> </ul> | <ul style="list-style-type: none"> <li>Two-way channel of communication</li> <li>Multiple interactions</li> <li>Medium- to long-term</li> <li>Advancement of solutions to complex problems</li> </ul> | <ul style="list-style-type: none"> <li>Two-way channel of communication</li> <li>Multiple interactions</li> <li>Medium- to long-term</li> <li>Advancement of solutions to complex problems</li> </ul> | <ul style="list-style-type: none"> <li>Two-way channel of communication</li> <li>Multiple interactions</li> <li>Medium to long-term</li> <li>Advancement of solutions to complex problems</li> </ul> |
| STRATEGIES                                                                                                                                                                                                   |                                                                                                                                                                                                                        |                                                                                                                                                                                                       |                                                                                                                                                                                                       |                                                                                                                                                                                                      |
| Media releases, brochures, pamphlets, outreach to population groups, translated information, new and social media                                                                                            | Focus groups, interviews, community surveys, public hearings, public comment periods                                                                                                                                   | Forums, advisory boards, stakeholder involvement, coalitions, policy development and advocacy, including legislative briefings, and testimony, workshops, community-wide events                       | Co-led community meetings, advisory boards, coalitions, and partnerships, policy development and advocacy, including legislative briefings and testimony                                              | Community-led planning efforts, community-hosted forums, collaborative partnerships, coalitions, policy development and advocacy including legislative briefings and testimony                       |

*Adapted from King County, Washington and IAP2*

A community-driven equitable climate preparedness planning process involves collaboration and shared decision-making between local government staff and the community with the aim of co-creating an equitable climate preparedness plan. In terms of the levels of engagement continuum depicted above, this approach most aligns with shared leadership and community-driven, where there is an emphasis on a shared decision-making and co-ownership over the development of the plan.





Lori Droste  
Councilmember, District 8

## **ACTION CALENDAR**

June 30, 2020

**To:** Honorable Mayor and Members of the City Council

**From:** Councilmember Lori Droste (Author) and Councilmembers Rigel Robinson (Co-Sponsor) and Rashi Kesarwani (Co-Sponsor)

**Subject:** Commission Reorganization for Post-COVID19 Budget Recovery

### **RECOMMENDATION**

- 1) Reorganize existing commissions with the goal of achieving 20 total commissions.
- 2) Reorganize existing commissions within various departments to ensure that no single department is responsible for more than five commissions.
- 3) Reorganize commissions within the Public Works Department to ensure Public Works oversees no more than three commissions.
- 4) Refer to the City Manager and every policy committee to agendaize at the next meeting available to discuss commissions that are in their purview and make recommendations to the full Council on how to reorganize and address the various policy areas. Commission members should be notified and chairs should be invited to participate. Policy committee members are encouraged to consider the renaming of some commissions in order to ensure that all policy areas are addressed.



## **PROBLEM/SUMMARY STATEMENT**

Demand for city workers staffing commissions is larger than the City's ability to supply it at an acceptable financial and public health cost. Thirty-seven commissions require valuable city staff time and funding that could be better spent providing essential services. The COVID-19 pandemic has impacted the City of Berkeley in a myriad of ways, resulting in enormous once-in-a-lifetime socioeconomic and public health impacts. While the City Manager and department heads are addressing how to best prepare and protect our residents, particularly our most vulnerable, they are also required to oversee an inordinate amount of commissions for a medium-sized city at a significant cost.

The City of Berkeley faces many challenges, including the COVID-19 pandemic and its resultant budget and staffing impacts. Prior to the onset of COVID-19, the City Council and staff spent significant Council time on items originating with the City's advisory commissions. As the Shelter in Place is gradually lifted, critical city staff will resume staffing these 37 commissions. As a result, too much valuable staff time will continue to be spent on supporting an excessive amount of commissions in Berkeley rather than addressing the basic needs of the City.

## **BACKGROUND**

### **Review of Existing Plans, Programs, Policies, and Laws**

The City of Berkeley has approximately thirty-seven commissions overseen by city administration, most of which have at least nine members and who are appointed by individual councilmembers. These commissions were intended to be a forum for public participation beyond what is feasible at the City Council, so that issues that come before the City Council can be adequately vetted.

Some commissions are required by charter or mandated by voter approval or state/federal mandate. Those commissions are the following:

1. Board of Library Trustees (charter)
2. Business Improvement Districts (state mandate)
3. Civic Arts Commission (charter)
4. Community Environmental Advisory Commission (state/federal mandate--CUPA)
5. Fair Campaign Practices Commission/Open Government (ballot measure)
6. Homeless Services Panel of Experts (ballot measure)
7. Housing Advisory Commission (state/federal mandate)
8. Human Welfare and Community Action (state/federal mandate)
9. Measure O Bond Oversight Committee (ballot measure)
10. Mental Health Commission (state/federal mandate)
11. Personnel (charter)

12. Police Review Commission (ballot measure)
13. Sugar-Sweetened Beverages (ballot measure)

Berkeley must have its own mental health commission because of its independent Mental Health Division. In order to receive services, the City needs to have to have an advisory board. Additionally, Berkeley's Community Environmental Advisory Commission is a required commission in order to oversee Certified Unified Program Agency (CUPA) under California's Environmental Protection Agency. Additionally, some commissions serve other purposes beyond policy advisories. The Children, Youth and Recreation Commission, Housing Advisory Commission, and the Human Welfare and Community Action Commission advise Council on community agency funding. However, some of the aforementioned quasi-judicial and state/federal mandated commissions do not need to stand independently and can be combined to meet mandated goals.

In comparison to neighboring jurisdictions of similar size, Berkeley has significantly more commissions. The median number of commissions for these cities is 12 and the average is 15.

| Comparable Bay Area City | Population (est.) | Number of Commissions | Links                                                                                                                                                                                                         |
|--------------------------|-------------------|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Berkeley                 | 121,000           | 37                    | <a href="https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_Commissions/External%20Roster.pdf">https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3 - Commissions/External%20Roster.pdf</a> |
| Antioch                  | 112,000           | 6                     | <a href="https://www.antiochca.gov/government/boards-commissions/">https://www.antiochca.gov/government/boards-commissions/</a>                                                                               |
| Concord                  | 130,000           | 14                    | <a href="https://www.cityofconcord.org/264/Applications-for-Boards-Committees-Comm">https://www.cityofconcord.org/264/Applications-for-Boards-Committees-Comm</a>                                             |
| Daly City                | 107,000           | 7                     | <a href="http://www.dalycity.org/City_Hall/Departments/city_clerk/Commissions_Information/boards.htm">http://www.dalycity.org/City_Hall/Departments/city_clerk/Commissions_Information/boards.htm</a>         |
| Fairfield                | 117,000           | 7                     | <a href="https://www.fairfield.ca.gov/gov/comms/default.asp">https://www.fairfield.ca.gov/gov/comms/default.asp</a>                                                                                           |
| Fremont                  | 238,000           | 15                    | <a href="https://www.fremont.gov/76/Boards-Commissions-Committees">https://www.fremont.gov/76/Boards-Commissions-Committees</a>                                                                               |
| Hayward                  | 160,000           | 12                    | <a href="https://www.hayward-ca.gov/your-government/boards-commissions">https://www.hayward-ca.gov/your-government/boards-commissions</a>                                                                     |
| Richmond                 | 110,000           | 29                    | <a href="https://www.ci.richmond.ca.us/256/Boards-and-Commissions">https://www.ci.richmond.ca.us/256/Boards-and-Commissions</a>                                                                               |
| San Mateo                | 105,000           | 7                     | <a href="https://www.cityofsanmateo.org/60/Commissions-Boards">https://www.cityofsanmateo.org/60/Commissions-Boards</a>                                                                                       |

|           |         |    |                                                                                                                                                           |
|-----------|---------|----|-----------------------------------------------------------------------------------------------------------------------------------------------------------|
| Sunnyvale | 153,000 | 10 | <a href="https://sunnyvale.ca.gov/civicax/filebank/blobdload.aspx?blobid=22804">https://sunnyvale.ca.gov/civicax/filebank/blobdload.aspx?blobid=22804</a> |
| Vallejo   | 122,000 | 17 | <a href="http://www.ci.vallejo.ca.us/cms/one.aspx?pageId=22192">http://www.ci.vallejo.ca.us/cms/one.aspx?pageId=22192</a>                                 |

### Consultation and Outreach

To understand the impact on various departments and staffing capacity, the following table shows which departments are responsible for overseeing various commissions.

| Commission Name                                                | Overseeing Department<br>(Total Commissions in<br>Department) |
|----------------------------------------------------------------|---------------------------------------------------------------|
| Animal Care Commission                                         | City Manager (7)                                              |
| Civic Arts Commission                                          | City Manager (7)                                              |
| Commission on the Status of Women                              | City Manager (7)                                              |
| Elmwood BID Advisory Board                                     | City Manager (7)                                              |
| Loan Administration Board                                      | City Manager (7)                                              |
| Peace and Justice Commission                                   | City Manager (7)                                              |
| Solano Ave BID Advisory Board                                  | City Manager (7)                                              |
|                                                                |                                                               |
| Cannabis Commission                                            | Planning (8)                                                  |
| Community Environmental Advisory Commission                    | Planning (8)                                                  |
| Design Review Committee                                        | Planning (8)                                                  |
| Energy Commission                                              | Planning (8)                                                  |
| Joint Subcommittee on the Implementation of State Housing Laws | Planning (8)                                                  |
| Landmarks Preservation Commission                              | Planning (8)                                                  |
| Planning Commission                                            | Planning (8)                                                  |
| Zoning Adjustments Board                                       | Planning (8)                                                  |
|                                                                |                                                               |
| Children, Youth, and Recreation Commission                     | Parks (3)                                                     |
| Parks and Waterfront Commission                                | Parks (3)                                                     |
| Youth Commission                                               | Parks (3)                                                     |
|                                                                |                                                               |
| Commission on Aging                                            | Health, Housing, and<br>Community Services<br>(HHCS) (10)     |
| Commission on Labor                                            | HHCS (10)                                                     |
| Community Health Commission                                    | HHCS (10)                                                     |

|                                                               |                     |
|---------------------------------------------------------------|---------------------|
| Homeless Commission                                           | HHCS (10)           |
| Homeless Services Panel of Experts                            | HHCS(10)            |
| Housing Advisory Commission                                   | HHCS (10)           |
| Human Welfare & Community Action Commission                   | HHCS (10)           |
| Measure O Bond Oversight Committee                            | HHCS (10)           |
| Mental Health Commission                                      | HHCS (10)           |
| Sugar-Sweetened Beverage Product Panel of Experts             | HHCS (10)           |
|                                                               |                     |
| Disaster and Fire Safety Commission                           | Fire (1)            |
|                                                               |                     |
| Commission on Disability                                      | Public Works (5)    |
| Public Works Commission                                       | Public Works (5)    |
| Traffic Circle Task Force                                     | Public Works (5)    |
| Transportation Commission                                     | Public Works (5)    |
| Zero Waste Commission                                         | Public Works (5)    |
|                                                               |                     |
| Fair Campaign Practices Commission/Open Government Commission | City Attorney (1)   |
|                                                               |                     |
| Personnel Board                                               | Human Resources (1) |
|                                                               |                     |
| Police Review Commission                                      | Police (1)          |
|                                                               |                     |
| Board of Library Trustees                                     | Library (1)         |

Gray=charter

Red=state/federal mandate

Yellow=quasi-judicial

Blue=ballot initiative

Orange=state/federal mandate and quasi-judicial

Green=quasi-judicial and ballot initiative

The departments that staff more than five commissions are Health, Housing, and Community Services (10 commissions), Planning (8 commissions), and the City Manager's department (7 commissions). At the same time, some smaller departments (e.g. the City Attorney's office) may be impacted just as meaningfully if they have fewer staff and larger individual commission workloads.

With the recent addition of policy committees, proposed legislation is now vetted by councilmembers in these forums. Each policy committee is focused on a particular

content area aligned with the City of Berkeley's strategic plan and is staffed and an advisory policy body to certain city departments. Members of the public are able to provide input at these committees as well. The policy committees currently have the following department alignment:

### **Department and Policy Committee alignment**

1. **Agenda and Rules**—all departments
2. **Budget and Finance**—City Manager, Clerk, Budget, and Finance
3. **Land Use and Economic Development**—Clerk, Planning, HHCS, City Attorney, and City Manager (OED)
4. **Public Safety**—Clerk, City Manager, Police, and Fire
5. **Facilities, Infrastructure, Transportation, Environment and Sustainability** (Clerk, City Manager, Planning, Public Works, and Parks)
6. **Health, Equity, Life Enrichment, and Community** (Clerk, City Manager, HHCS)

### **CRITERIA CONSIDERED**

#### **Effectiveness**

*How does this proposal maximize public interest?* For this analysis, the effectiveness criterion includes analysis of the *benefits* to the entire community equitably with specific emphasis on public health, racial justice and safety.

#### **Fiscal Impacts/Staffing Costs**

*What are the costs?* The fiscal impact of the proposed recommendation and various alternatives considered includes direct costs of commissions.

#### **Administrative Burden/Productivity Loss**

*What are the operational requirements or productivity gains or losses from this proposal?*

The administrative burden criterion guides the analysis in considering operational considerations and productivity gains and losses. While operational considerations and tradeoffs are difficult to quantify in dollar amounts, productivity losses were considered in its absence.

#### **Environmental Sustainability**

The environmental sustainability criterion guides legislation in order to avoid depletion or degradation of the natural resources and allow for long-term environmental quality.

## **ALTERNATIVES**

### **Alternative #1–The Current Situation**

The current situation is the status quo. The City of Berkeley would retain all commissions and no changes would be made.

### **Alternative #2–Collaborative Approach with Quantity Parameters**

This approach would specify a specific number (20) of commissions the City of Berkeley should manage and set parameters around individual department responsibilities. Furthermore, it requires a collaborative approach and outreach to address specific policy areas by referring it to the Council policy committees for further analysis and specific recommendations.

### **Alternative #3–Committee Alignment, Mandated and Quasi-Judicial Commissions**

This alternative would consist of five commissions aligned directly with the policy committees in addition to quasi-judicial bodies and ones required by charter, ballot measure or law.

- *Budget and Finance Commission*
- *Facilities, Infrastructure, Transportation, Environment and Sustainability Commission (state/federal mandate--CUPA)*
- *Health, Equity, and Life Enrichment*
- *Land Use and Economic Development*
- *Public Safety*
- Board of Library Trustees (charter)
- Civic Arts Commission (charter)
- Community Environmental Advisory Commission (state/federal mandate--CUPA)
- Fair Campaign Practices Commission/Open Government (ballot measure)
- Homeless Services Panel of Experts (ballot measure)
- Housing Advisory Commission (state/federal mandate)
- Human Welfare and Community Action (state/federal mandate)
- Landmarks Commission (quasi-judicial)
- Measure O Bond Oversight Committee (ballot measure)
- Mental Health Commission (state/federal mandate)
- Planning (quasi-judicial)
- Personnel (charter)
- Police Review Commission (ballot measure)
- Sugar-Sweetened Beverages (ballot measure)
- Zoning Adjustments Board (quasi-judicial)

#### **Alternative #4: Extreme Consolidation**

This alternative represents a prescriptive approach with maximum consolidation in content area and mandated commissions, absent charter amendments.

- Board of Library Trustees (charter)
- Business Improvement District (state/federal mandate)
- Civic Arts Commission (charter)
- Community Environmental Advisory Commission/Energy/Zero Waste (state/federal--CUPA)
- Fair Campaign Practices Commission/Open Government (ballot measure)
- Homeless Services Panel of Experts (ballot measure)
- Human Welfare and Community Action (state/federal mandate)
- Measure O Bond Oversight Committee (ballot measure)/Housing Advisory Commission (state/federal mandate)
- Mental Health Commission (state/federal mandate)
- Personnel (charter)
- Planning Commission (quasi-judicial and appeals)
- Board of Appeals (land use appeals)
- Police Review Commission (ballot measure)
- Health and Sugar-Sweetened Beverages (ballot measure)

#### **PROJECTED OUTCOMES (CRITERIA X ALTERNATIVES)**

|                                       | <b>Current Situation</b> | <b>Collaborative Approach</b> | <b>Policy Committee Alignment</b> | <b>Extreme Consolidation</b> |
|---------------------------------------|--------------------------|-------------------------------|-----------------------------------|------------------------------|
| <b>Benefit/ Effectiveness</b>         | medium                   | high                          | medium                            | low                          |
| <b>Cost</b>                           | high                     | medium                        | low                               | low                          |
| <b>Administrative Burden</b>          | high                     | low                           | low                               | medium                       |
| <b>Relative Environmental Benefit</b> | low                      | medium                        | medium                            | high                         |

#### **Current Situation and Its Effects (Alternative #1)**

##### *Effectiveness of the Current Situation*

Commissions serve a vital role in the City of Berkeley's rich process of resident engagement. An analysis of agendas over the past several years shows that the



commissions have created policy that have benefited the community in meaningful and important ways. In 2019, approximately two-thirds of commission items submitted to Council passed. From 2016-2019, an average of 39 items were submitted by commissions to Council for consideration. Every year roughly 15-18 (~40-45%) commissions do not submit any items for Council policy consideration in any given year. The reason for this varies. Some commissions don't submit policy recommendations (BIDs) and some commissions recommendations may not rise to Council level at all or come to Council as a staff recommendation (e.g. ZAB and DRC). Additionally, a few commissions struggle to reach monthly quorum as there are currently 64 vacancies on the various commissions, excluding alternative commissioners.

It is also important to consider equitable outcomes and the beneficiaries as well. For example, the City's Health, Housing and Community Development department serves an important role in addressing COVID-19, racial disparities, inequitable health outcomes, affordable housing, and other important community programs. Additionally, Health, Housing, and Community Development also staffs ten commissions, more than many cities of Berkeley's size. Council needs to wrestle with these tradeoffs to ensure that we seek the maximum benefit for *all* of the Berkeley community, particularly our most vulnerable.

### *Staffing Costs*

Based upon preliminary calculations of staff titles and salary classifications, the average staff secretary makes roughly \$60-\$65/hour. Based upon recent interviews with secretaries and department heads, individual commission secretaries work anywhere from 8-80 hours a month staffing and preparing for commission meetings. To illustrate this example, a few examples are listed below.

| Commission                        | Step 5 Rate of Pay | Reported Hours a Month | Total <b>Direct</b> Cost of Commission <b>per Month</b> |
|-----------------------------------|--------------------|------------------------|---------------------------------------------------------|
| Animal Care                       | \$70.90            | 8                      | \$567.20                                                |
| Landmarks Preservation Commission | \$57.96            | 80                     | \$4,636.80                                              |
| Design Review Commission          | \$52.76            | 60                     | \$3,165.60                                              |
| Peace and Justice                 | \$60.82            | 32                     | \$1946.24                                               |

It is extremely challenging to estimate a specific cost of commissions in the aggregate because of the varying workload but a safe estimate of salary costs dedicated to commissions would be in the six-figure range.

Many commissions--particularly quasi-judicial and land use commissions-- require more than one staff member to be present and prepare reports for commissions. For example, Zoning Adjustment Board meetings often last five hours or more and multiple staff members spend hours preparing for hearings. The Planning Department indicates that *in addition* to direct hours, additional commission-related staff time adds an extra 33% staff time. Using the previous examples, this means that the Landmarks Preservation Commission would cost the city over \$6,000 in productivity while the Design Review Commission would cost the City over \$4,000 a month.

#### *Productivity Losses and Administrative Burden*

Current productivity losses are stark because of the sheer amount of hours of staffing time dedicated to commissions. As an example, in 2019 one of the City of Berkeley's main homeless outreach workers staffed a commission within the City Manager's department. She spent approximately 32 hours a month working directly on commission work. While this is not a commentary on a particular commission, this work directly impacted her ability to conduct homeless outreach. The Joint Subcommittee on the Interpretation of State Housing Laws is another example. Planners dedicate 50 hours a month to that commission. Meanwhile, this commission has limited ability in affecting state law and the City Attorney's office is responsible for interpreting state law. While this commission does important work on other issues, there is little nexus in interpreting state housing laws and could be disbanded and consolidated with an existing commission. If this commission were disbanded, the current planner could dedicate significant hours to Council's top priorities in Planning. This year's top Council priority is the displacement of Berkeley's residents of color and African Americans (Davila).

#### *Environmental Sustainability*

The current commission structure doesn't have a large impact on the environment but, in relative terms, is the most burdensome because of the potential vehicle miles travelled by hundreds of commissioners (VMT) and printing costs associated with a large number of commissions.

## **ALTERNATIVES CONSIDERED**

### **Effectiveness**

#### *Alternative #2--Collaborative approach*

While the outcome is unknown, a collaborative approach with a specified target quantity of commissions and departmental responsibility would likely yield significant benefit to the community. Due to the projected budget cuts, city staff will need to have more bandwidth to deliver baseline services and priority projects. Civic engagement will still be retained due to a myriad of ways to provide public input but more importantly, current commissioners and civic partners are invited to provide feedback to the policy committees for consideration. Additionally, this approach is a less prescriptive approach which allows Council to acknowledge that the current number of commissions is unsustainable and impacts baseline services. Instead of recommending specific commission cuts at this moment, this approach simply allows Council to state an appropriate number of commissions (20) and acknowledge the severe staffing impacts of the current configuration. Furthermore, twenty commissions is a reasonable starting point, especially when considering that most area cities that are approximately Berkeley's size have seven commissions.

#### *Alternative 3--Policy Committee Alignment*

This approach would yield some benefit in that commissions would reflect current policy committees and would directly advise those bodies. This is beneficial because commissions directly aligned with policy committees would be an independent civic replica of the appointed policy committee bodies. It further retains mandated commissions. However, this prescriptive approach doesn't allow for flexibility in retaining historically important commissions and it does not address the benefit of potentially consolidating two commissions that address the same policy content area. For instance, it may be possible to combine the sugar-sweetened beverage oversight panel with the Health, Life, and Equity commission or the CEAC with the Facilities, Infrastructure, Transportation, Environment and Sustainability.

#### *Alternative 4--Extreme Consolidation--*

This approach is the most drastic alternative and the overall effectiveness is likely low, mainly due to potential community backlash due to Berkeley's long history of civic engagement. Furthermore, the Planning Commission would likely become overburdened and less effective because land use appeals would have to be routed through the Planning Commission.

## **Costs/Fiscal Impact**

### *Alternative 2--Collaborative Approach*

The fiscal impact of the Collaborative Approach is unknown at this time because this recommendation does not prescribe specific commission consolidations or cuts. However, if commissions are reorganized such that Berkeley will have 20 instead of 38, there will be significant direct cost savings. One can reasonably assume that the direct financial cost could reduce to almost half the current amount.

### *Alternative 3--Policy Committee Alignment*

The fiscal impact of Policy Committee Alignment would yield significant savings due to commission consolidation. One can reasonably assume that the direct financial cost could reduce to more than half the current amount.

### *Alternative 4--Extreme Consolidation*

Extreme Consolidation would yield the most savings due to commission consolidation. One can reasonably assume that the direct financial cost would reduce to 25%-30% of the current amount spent on commission work.

## **Productivity**

### *Alternative 2--Collaborative Approach*

The most glaring impact on the current commission structure is administrative impacts and productivity. Whether City Council consolidates commissions or not, attributable salary costs will still exist. The primary benefit of pursuing the Collaborative Approach would center on productivity. The City of Berkeley is likely to garner significant productivity gains by specifying a target number of commissions overall and within departments. Using the Peace and Justice and Joint Subcommittee on the Interpretation of State Housing Laws examples above, more staff will be able to focus on core services and priority programs. Thousands of hours may be regained by dedicated staff to tackle the tough issues our community faces, especially in light of COVID-19 and concerns around racial equity.

### *Alternative 3--Policy Committee Alignment*

This alternative likely will yield the same productivity benefits as the collaborative approach, if not more. The City of Berkeley would likely garner significant productivity gains by specifying less than twenty commissions. Thousands of hours may be regained by dedicated staff to tackle the tough issues our community faces, especially in light of COVID-19 and concerns around racial equity.

#### *Alternative 4–Extreme Consolidation*

This alternative would likely provide the most productivity gains and lessen administrative burdens overall. However, there could be unintended consequences of productivity within the planning department absent additional policy changes. For example, the quasi-judicial Zoning Adjustments Board and Planning Commission agendas are packed year round. It is unclear whether eliminating one of these commissions would lessen the administrative burden and increase productivity in the Planning Department or whether those responsibilities would merely shift commissions. At the same time, the Planning Department could benefit from reducing commissions to increase productivity within the planning department.

### **Environmental Sustainability**

#### *Alternative 2–Collaborative approach*

This alternative doesn't have a large impact on the environment other than potential vehicle miles travelled by hundreds of commissioners (VMT) and printing costs. However, these environmental impacts could be cut in half with commission reorganization.

#### *Alternative 3--Policy Committee Alignment*

This alternative doesn't have a large impact on the environment other than potential vehicle miles travelled by hundreds of commissioners (VMT) and printing costs. However, these environmental impacts could be cut in half with commission reorganization.

#### *Alternative 4–Extreme Consolidation*

This alternative would have negligible impacts on the environment other than potential vehicle miles travelled by hundreds of commissioners (VMT) and printing costs.

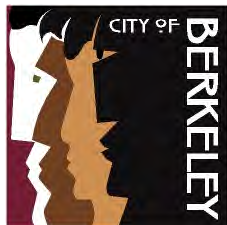
### **RATIONALE FOR RECOMMENDATION**

The Collaborative Approach is the best path forward in order to pursue Berkeley's commitment to

- Create affordable housing and housing support services for our most vulnerable community members
- Be a global leader in addressing climate change, advancing environmental justice, and protecting the environment
- Champion and demonstrate social and racial equity
- Provide an efficient and financially-healthy City government
- Provide state-of-the-art, well-maintained infrastructure, amenities, and facilities
- Foster a dynamic, sustainable, and locally-based economy
- Create a resilient, safe, connected, and prepared City

- Be a customer-focused organization that provides excellent, timely, easily-accessible service and information to the community
- Attract and retain a talented and diverse City government workforce

The status quo—37 commissions— is too costly and unproductive. At the same time, civic engagement and commission work absolutely deserve an important role in Berkeley. Consequently, this legislation retains commissions but centers on overall community benefit, staff productivity, and associated costs. This is imperative to address, especially in light of COVID-19 and community demands for reinvestment in important social services.



[First Last name]  
Councilmember District [District No.]

## **SUPPLEMENTAL REVISED AGENDA MATERIAL for Supplemental Packet 2**

**Meeting Date:** February 4, 2020

**Item Number:** 2

**Item Description:** Statement on Item 2 - Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12

**Submitted by:** Councilmember Hahn

This item seeks to outlaw Officeholder Accounts in Berkeley. I would like to offer an alternative: to allow Officeholder Accounts but establish regulations to limit them in ways that reflect Berkeley's limitations on campaign donations and consider narrowing the uses for which Officeholder Account funds can be used.

The action I advocate for Council to take is to refer a discussion of Officeholder accounts to the Agenda and Rules Committee, to consider a reasonable set of limitations and rules for such accounts and bring back recommendations to the full Council, for the Council to consider referring to the Fair Campaign Practices Committee.





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ACTION CALENDAR  
February 4, 2020

To: Honorable Mayor and Members of the City Council  
From: Vice Mayor Sophie Hahn  
Subject: Statement on Item 2 - Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12

RECOMMENDATION

This item seeks to outlaw Officeholder Accounts in Berkeley. I would like to offer an alternative: to allow Officeholder Accounts but establish regulations to limit them in ways that reflect Berkeley's limitations on campaign donations and consider narrowing the uses for which Officeholder Account funds can be used.

The action I advocate for Council to take is to refer a discussion of Officeholder accounts to the Agenda and Rules Committee, to consider a reasonable set of limitations and rules for such accounts and bring back recommendations to the full Council, for the Council to consider referring to the Fair Campaign Practices Committee.

Officeholder accounts are accounts an elected official can open, and raise funds for, to pay for expenses related to the office they hold.<sup>1</sup> They are not campaign accounts, and cannot be used for campaign purposes. The types of expenses Officeholder Accounts can be used for include research, conferences, events attended in the performance of government duties, printed newsletters, office supplies, travel related to official duties, etc. Cities can place limits on Officeholder Accounts, as Oakland has done.<sup>2</sup> Officeholder Accounts must be registered as official "Committees" and adhere to strict public reporting requirements, like campaign accounts. They provide full transparency to the public about sources and uses of funds.

The FCPC bases its recommendation to prohibit Officeholder Accounts on arguments about "equity" and potential "corruption" in elections. The report refers repeatedly to "challengers" and "incumbents," suggesting that Officeholder Accounts are vehicles for unfairness in the election context.

I believe that the FCPC's recommendations reflect a misunderstanding of the purpose and uses of Officeholder Accounts, equating them with campaign accounts and suggesting that they create an imbalance between community members who apparently have already decided to run against an incumbent (so-called "challengers") and elected officials who are presumed to be

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<sup>1</sup> <http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/LegalDiv/Regulations/Index/Chapter5/18531.62.pdf>

<sup>2</sup> <http://www2.oaklandnet.com/w/OAK052051>

always running for office. The recommendations do not take into account some important framing: the question of what funds are otherwise available to pay for Officeholder-type expenses for Officeholders or members of the public. Contrary to the conclusions of the FCPC, I believe Officeholder accounts are an important vehicle to redress a significant disadvantage for elected officials, whose ability to exercise free speech in the community and participate in conferences and events related to their profession is constrained by virtue of holding public office, as compared to community members, whose speech rights are unrestricted in any manner whatsoever, and who can raise money to use for whatever purposes they desire.

Outlawing Officeholder Accounts is also posited as a means to create equity between more and less wealthy Officeholders, on the theory that less affluent Officeholders will have less access to fundraising for Officeholder Accounts than more affluent Officeholders. Because there are no prohibition on using personal funds for many of the purposes for which Officeholder Account funds can be used, prohibiting Officeholder Accounts I believe has the opposite effect; it leaves more affluent Officeholders with the ability to pay for Officeholder expenses from personal funds, without providing an avenue for less affluent Officeholders, who may not have available personal funds, to raise money from their supporters to pay for such Officeholder expenses.

The question of whether Officeholder Accounts should be allowed in Berkeley plays out in the context of a number of rules and realities that are important to framing any analysis.

First, by State Law, elected officials are prohibited from using public funds for a variety of communications that many constituents nevertheless expect. For example, an elected official may not use public funds to send a mailing announcing municipal information to constituents, “such as a newsletter or brochure, [...] delivered, by any means [...] to a person’s residence, place of employment or business, or post office box.”<sup>3</sup> Nor may an elected official mail an item using public funds that features a reference to the elected official affiliated with their public position.<sup>4</sup> Note that Electronic newsletters are not covered by these rules, and can and do include all of these features, even if the newsletter service is paid for by the public entity. That said, while technically not required, many elected officials prefer to use email newsletter distribution services (Constant Contact, MailChimp, Nationbuilder, etc.) paid for with personal (or “Officeholder”) funds, to operate in the spirit of the original rules against using public funds for communications that include a photo of, or references to, the elected official.

Without the ability to raise funds for an Officeholder Account, for an elected official to send a paper newsletter to constituents or to use an email newsletter service that is not paid for with public funds, they must use personal funds. A printed newsletter mailed to 5-6,000 households (a typical number of households in a Berkeley City Council District) can easily cost \$5,000+, and an electronic mail service subscription typically costs \$10 (for the most basic service) to \$45 per month, a cost of \$120.00 to over \$500 per year - in personal funds.

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<sup>3</sup> <http://www.fppc.ca.gov/learn/public-officials-and-employees-rules-/communications-sent-using-public-funds/campaign-related-communications.html>

<sup>4</sup> <http://www.fppc.ca.gov/learn/public-officials-and-employees-rules-/communications-sent-using-public-funds/campaign-related-communications.html>

Second, Berkeley City Councilmembers and the Mayor of Berkeley are not paid enough for there to be any reasonable expectation that personal funds should be used for these types of expenses.<sup>5</sup> For many Councilmembers and/or the Mayor, work hours are full time - or more - and there is no other source of income.

Finally, and most importantly, local elected officials are restricted from accepting money or gifts. An elected official cannot under any circumstances raise money to pay for Officeholder expenses such as printed communications, email newsletter services, travel and admission to industry conferences for which the elected official is not an official delegate (e.g., conferences on City Planning, Green Cities, Municipal Finance, etc.), and other expenses related to holding office that are not covered by public funds. Again, without the possibility of an Officeholder Account, an elected official generally must use personal funds for these expenses, allowing more affluent elected officials to participate while placing a hardship or in some cases a prohibition on the ability of less affluent elected officials to undertake these Officeholder-type activities - which support expected communications with constituents and participation in industry activities that improve the elected official's effectiveness.

The elected official's inability to raise funds from others must be contrasted with the ability of a community member - a potential "challenger" who has not yet declared themselves to be an actual candidate - or perhaps a neighborhood association, business or corporation (Chevron, for example) - to engage in similar activities. Nothing restricts any community member or organization from using their own funds - or funds obtained from anyone - a wealthy friend, a corporation, a local business, a community organization or their neighbors - for any purpose whatsoever.

Someone who doesn't like the job an elected official is doing could raise money from family or connections anywhere in the community - or the world - and mail a letter to every person in the District or City criticizing the elected official, or buy up every billboard or banner ad on Facebook or Berkeleyside to broadcast their point of view. By contrast, the elected official, without access to an Officeholder Account, could only use personal funds to "speak" with their own printed letter, billboard or advertisement. Community members (including future "challengers") can also attend any and all conferences they want, engage in travel to visit interesting cities and projects that might inform their thoughts on how a city should be run, and pay for those things with money raised from friends, colleagues, businesses, corporations, foreign governments - *anyone*. They are private citizens with full first amendment rights and have no limitations, no reporting requirements, no requirements of transparency or accountability whatsoever.

The imbalance is significant. Outside of the campaign setting, where all declared candidates can raise funds and must abide by the same rules of spending and communications, *elected officials cannot raise money for any expenses whatsoever, from any source, while community*

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<sup>5</sup> Councilmembers receive annual compensation of approximately \$36,000, while the Mayor receives annual compensation of approximately \$55,000.<sup>5</sup>

*members, including organizations and private companies, can raise as much money as they want from any sources, and use that money for anything they choose.*

Without the ability to establish and fund an Officeholder Account, the only option an elected official has is to use personal funds, which exacerbates the potential imbalance between elected officials with more and less personal funds to spend. Elected officials work within a highly regulated system, which can limit their ability to “speak” and engage in other activities members of the public are able to undertake without restriction. Officeholder Accounts restore some flexibility by allowing elected officials to raise money for expenses related to holding office, so long as the sources and uses of those funds is made transparent.

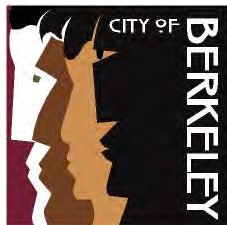
By allowing Officeholder Accounts and regulating them, Berkeley can place limits on amounts that can be raised, and on the individuals/entities from whom funds can be accepted, similar (or identical) to the limits Berkeley places on sources of campaign funds. Similarly, Berkeley can restrict uses of funds beyond the State’s restrictions, to ensure funds are not used for things like family members’ travel, as is currently allowed by the State. Oakland has taken this approach, and has a set of Officeholder Account regulations that provide a good starting point for Berkeley to consider.<sup>6</sup>

I respectfully ask for a vote to send the question of potential allowance for, and regulation of, Officeholder Accounts to the Agenda and Rules Committee for further consideration.

CONTACT: Sophie Hahn, District 5: (510) 981-7150

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<sup>6</sup> <http://www2.oaklandnet.com/w/OAK052051>



Fair Campaign Practices Commission

## **SUPPLEMENTAL AGENDA MATERIAL for Supplemental Packet 2**

**Meeting Date:** February 4, 2020

**Item Number:** 2

**Item Description:** Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12

**Submitted by:** Samuel Harvey; Deputy City Attorney / Secretary, Fair Campaign Practices Commission

Attachment 4 to the report (“Memorandum signed by City Attorney Manuela Albuquerque”) included an attachment which was erroneously omitted from the Council item. Attached is Attachment 4 (for context) along with the additional pages which should be included to appear as pages 16 -17 of the item.



Office of the  
City Attorney

**DATE:** December 28, 1999

**TO:** BARBARA GILBERT,  
Aide to Mayor Shirley Dean

**FROM:** MANUELA ALBUQUERQUE, City Attorney *MA*  
By: CAMILLE COUREY, Deputy City Attorney

**SUBJECT:** APPLICATION OF BERKELEY ELECTION REFORM ACT TO OFFICEHOLDER ACCOUNTS

ISSUE:

Does the Berkeley Election Reform Act (BERA) govern officeholder accounts?

CONCLUSION:

No. The BERA does not govern true officeholder accounts per se. However, the mere fact that an account may be designated an officeholder account does not insulate it from scrutiny under the BERA or other applicable local law if the officeholder account is not used strictly for officeholder purposes or if some action taken with respect to the officeholder account implicates campaign contributions and expenditures or other applicable local laws.

ANALYSIS:

Sarah Reynoso, former secretary and staff counsel to the Fair Campaign Practices Commission (FCPC), issued an opinion to the FCPC dated December 2, 1991, a copy of which is attached, stating that the BERA's contribution limit does not apply to contributions made to an officeholder account. The opinion reasons that the BERA's contribution limit applies only to "contributions" as defined in the BERA, i.e., which are made directly or indirectly in support of or in opposition to the nomination or election of one or more candidates to elective office. (See Berkeley Municipal Code (BMC) § 2.12.100.) Contributions to a true officeholder account are not made for the purpose of nominating or electing a candidate to office, but rather for the use of an officeholder in carrying out the duties of his or her office. Therefore, the contribution limit of the BERA is inapplicable to officeholder accounts.<sup>1</sup> For similar reasons, the BERA does not

<sup>1</sup> However, the opinion also provided that contributions to officeholder accounts still had to be reported on campaign statements because the State Fair Political Practices Commission (FPPC) Regulations broadly defined contributions as any contribution for "political purposes." Since officeholder expenses are for political purposes, they must be reported to the State.

Barbara Gilbert

Re: Application of Berkeley Election Reform Act To Officeholder Accounts

December 28, 1999

Page 2

apply to true officeholder accounts.

The BERA requires the filing of statements to report the amounts received and expended in municipal elections. (See BMC §§ 2.12.015, 2.12.030 through 2.12.050) Specifically, a "campaign statement" required to be filed under the BERA is an itemized report which provides the information required by Sections 2.12.245 through 2.12.325 of the BERA. (BMC § 2.12.080.) Sections 2.12.245 through 2.12.325 govern the reporting of contributions and expenditures. "Contributions" and "expenditures" are defined by the BERA as any amounts received or expended, respectively, in aid of or in opposition to the nomination or election of one or more candidates to elective office. (See BMC §§ 2.12.100 and 2.12.130.) Contributions to or expenditures from a true officeholder account are not subject to the BERA's reporting requirements because they are made for the purpose of carrying out the duties of elective office, and not for the purpose of aiding or opposing the nomination or election of one or more candidates to elective office.<sup>2</sup> Therefore, the BERA does not apply to true officeholder accounts.

However, the fact that an account may be designated as an officeholder account will not shield it from scrutiny under the BERA if the officeholder account is, in fact, being used for the receipt of contributions or the making of expenditures in aid of the nomination or election of a candidate for local elective office. Nor will BERA requirements, such as the \$250 contribution limit or the prohibition against contributions from businesses to candidates, be held inapplicable if contributions made initially to an officeholder account are transferred subsequently to a campaign account. Where the actions taken with respect to an officeholder account implicate campaign contributions and expenditures in municipal elections, the officeholder account will be scrutinized under the BERA and other applicable local law.

Attachment

cc: Fair Campaign Practices Commission  
Sherry Kelly, City Clerk

City Attorney Opinion Index: ILE 1. and IILG.

CCM

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<sup>2</sup> Again, however, the State FPPC still requires the reporting of activity relating to an officeholder account. (See footnote 1.)




## CITY OF BERKELEY

DATE: December 9, 1991

Memorandum

TO: FCPC COMMISSIONERS

FROM: Sarah Reynoso,  Secretary & Staff CounselSUBJECT: APPLICABILITY OF BERA'S CONTRIBUTION LIMIT TO FUNDS RAISED FOR OFFICEHOLDER EXPENSESBACKGROUND AND ISSUE

I received the attached letter from Richard N. Lerner, treasurer of Friends of Loni Hancock Committee ("Committee"), regarding the applicability of BERA's (Berkeley Election Reform Act) \$250 contribution limit to funds raised to cover officeholder expenses. The Committee would like to raise money to cover activities by the Mayor for which the City has not allocated funds, for example, distribution of a newsletter and international travel to visit Berkeley Sister Cities.

Thus, the issue presented to the Commission is as follows: Is BERA's \$250 contribution limit applicable to funds raised for officeholder expenses?

CONCLUSION

No. The BERA's contribution limitation is only applicable to money raised "in aid of or in opposition to the nomination or election" of a candidate. Since the Committee intends to raise these funds for activities unrelated to the nomination or election of the Mayor, they are not subject to the BERA's \$250 contribution limitation. However, such funds must be reported as contributions under the State Political Reform Act and their expenditure itemized on the disclosure forms.

ANALYSIS

The BERA prohibits candidates for elective office from soliciting or accepting a contribution of more than \$250 from any one contributor. (BERA section 2.12.415.) Thus, funds which fall within BERA's definition of a contribution, are subject to the \$250 limit. In order to determine whether funds raised for officeholder expenses are subject to the contribution limitation, BERA's definition of contribution must be reviewed.

The BERA defines contribution, in part, as follows:

"Contribution" means a gift, subscription, loan, advance, deposit, pledge, forgiveness of indebtedness, payment of a debt by a third party, contract, agreement, or promise of money or anything of value or other obligation, whether or not legally enforceable, made directly or indirectly in aid of or



FCPC COMMISSIONERS  
December 9, 1991  
Page 2

in opposition to the nomination or election of one or more candidates . . . . (Emphasis added.)

Thus, the plain language of the BERA requires that a contribution be solicited for purposes related to the nomination or election of a candidate for office to be subject to its contribution limitation. Since the Committee intends to raise funds for purposes unrelated to the Mayor's nomination or election for elective office, such funds do not fall within the BERA's definition and are therefore not subject to its \$250 limitation.

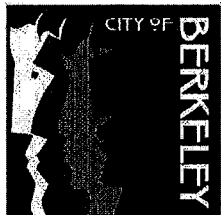
However, because the state Political Reform Act defines contribution to include any funds raised for political purposes, funds raised for officeholder expenses are considered contributions and must be reported on campaign disclosure forms.<sup>1/</sup> (Government Code section 82015.) Additionally, since the court's ruling in SEIU v. FPPC invalidated the state's \$1,000 contribution limit, funds raised for officeholder expenses are not subject to any limitation.

As a final precaution, the Committee should be advised that the FPPC has issued regulations concerning officeholder expenses and it should review them with respect to their interaction with the BERA.

Attachment

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<sup>1/</sup>I spoke with the FPPC's legal staff and confirmed that funds raised for officeholder expenses must be reported as contributions on the campaign disclosure forms.



Office of the City Auditor  
Ann-Marie Hogan, City Auditor

## MEMORANDUM

**Date:** March 14, 2017  
**To:** Councilmember Harrison  
**From:** Ann-Marie Hogan, City Auditor  
**Re:** Council Expense Reimbursement Guidance

The purpose of this memo is to provide you with forms for, links to, and general guidance on Council expense and reimbursement policies. In some cases, the restrictions on expenses for Council Members are more restrictive and more complex than those for City employees, because of state law. You must contact my office prior to incurring expenses for attendance at a conference, seminar, or training, or making travel arrangements. The purchase of routine office supplies should be made using the City's standard procurement procedures and vendors, using a purchase order, but on those occasions when you must pay for something personally and then request reimbursement, you will also need to submit the request to my office. For information regarding the City's procurement procedures, see Administrative Regulation 3.4<sup>1</sup>. Once your City email is active, we'll send this memo to you via email, so you can click on the links to the City's intranet. Please feel free to contact me if you or your staff have questions.

In July 2006, the Berkeley City Council passed Resolution No. 63,412–N.S. to comply with state bill AB1234, which requires all cities to adopt an expense reimbursement policy for legislators in local government, and sets specific requirements for that policy. In September 2013, at the recommendation of the City Attorney, Council rescinded Resolution No. 63,412–N.S. and replaced it with Resolution No. 66,295–N.S. (See attached.) Council adopted the new resolution to incorporate a budget relinquishment and grant policy, and also to clarify the criteria and spending limitations associated with reimbursements for the Mayor and Council Members. Some of the spending limitations include:

- **Mileage and Transit**:- Mileage is reimbursed at the current year's IRS mileage rate and must be accompanied by supporting documentation, such as a Google Maps printout. Use the most economical mode of transportation practical.
- **Meals**: Meals are reimbursed at the per diem rates set forth in City Administrative Regulation 3.9, or the actual cost of the meal, whichever is *lower*.<sup>2</sup> The per diem rate covers the meal, tax,

<sup>1</sup> Administrative Regulation 3.4: <http://icobweb/AR/PDF/AR3-4.pdf>

<sup>2</sup> Administrative Regulation 3.9: [http://icobweb/AR/PDF/2016/Administrative Regulation 3.9.pdf](http://icobweb/AR/PDF/2016/Administrative%20Regulation%203.9.pdf)

tip, and nonalcoholic beverages (alcoholic beverages are not reimbursable). The per diem rate also applies when Council Members are requesting reimbursement for meals paid on behalf of individuals who are conducting city related business, such as Legislative Assistants. Council Members must submit original receipts, a list of attendees and the Statement of Municipal Purpose form (explaining how the expense benefits the City), as part of the reimbursement request. Any expense in excess of the individual meal allowance will not be reimbursed. The current per diem rates are:

- Breakfast \$10
  - Lunch \$15
  - Dinner \$26
- **Airfare:** Airfare is reimbursed based on the most economical mode and class of transportation reasonably consistent with scheduling needs. We suggest that you attach a printout of available fares with your request. Please note that the current language in Resolution No. 66,295–N.S. is out of date because it references a program that is no longer available. This will be corrected in Council’s next revision of that resolution.
  - **Lodging:** Lodging for conferences will be reimbursed at the available group rates. If lodging at the conference rate is not available, reimbursement will be based on either the published conference rate or the government rates published by the U.S. General Services Administration, whichever is greater. Where no conference rate is published, the reimbursement rate will be based on the government rate or the median rate listed on discount travel websites, whichever is greater. Trivago, Priceline, Kayak, Orbitz, Travelocity, and Expedia are examples of travel sites that provide discount rates and may be used to identify a reasonable median rate. Include a printout of the published conference rate, government rate, or travel site rates with the reimbursement request as applicable. Council Members can look up rates by using the U.S. General Services Administration’s Per Diem Rates Look-Up tool.<sup>3</sup> Council Members should select the specific location they are traveling to in the look-up tool.
  - **Registration:** Generally, Council Members should use a purchase order for conference, seminar, and training registrations as defined by Administrative Regulation 3.9. However, Council Members may use their credit card to register, if that is the vendor’s required form of payment. Council Members may not submit their reimbursement request until after the event has taken place, and must include proof of payment, and should include evidence of attendance with their request. Resolution No. 66,295–N.S. also requires that Council members provide a report to Council on training they attend, but we will be recommending that this requirement be deleted since it is not required by AB1234.

<sup>3</sup> Hotel fee tool: <http://www.gsa.gov/portal/category/100120>

When completing a reimbursement request, Council Members must complete and provide the following:

1. FN-024 payment voucher: available in Administration Regulation 3.14<sup>4</sup>, on the City's intranet<sup>5</sup>, or by contacting Accounts Payable at (510) 981-7310. All three sources provide guidance for completing this form.
2. Statement of municipal purpose form: available in City Auditor's Groupware section or by contacting the City Auditor's Office at (510) 981-6750 or auditor@cityofberkeley.info.
3. Supporting documentation: Council member original receipts, proof of payment, official per diem rates, etc.

Council Members must include account codes on the FN-024 payment voucher. The City's standard account codes are *14 digits* long and include both an element and an object code as the last four digits. The most commonly used element and object codes are:

- 4064: mileage/transportation (including taxi or ride-sharing service, such as Uber or Lyft)
- 4063: registration
- 4062: meals and lodging related to conferences, seminars, training, workshops, and similar
- 4061: airfare
- 5550: meals and food for city business, events, functions, and similar business meals

City Administrative Regulation (A.R.) 3.9 establishes the policies and procedures for reimbursing expenses incurred by City staff to attend conferences, meetings, seminars, trainings, and workshops. The regulation complements Resolution No. 66,295–N.S., which establishes the procedures for Council Members. A.R. 3.9 includes the following exceptions for Mayor and Council Members' expenses:

- **Attendance and travel request form:** The Mayor, Council Members, and Legislative Assistants are not required to submit an Attendance and Travel Request form. (A.R. 3.9, page two)
- **Paying for another employee's expenses:** The Mayor, Council Members, and Legislative Assistants may be reimbursed for paying for other legislative staff's or Council Members' expenses incurred for city related business. This is an exception to A.R. 3.9, noted on page three.
- **Business meals:** The Mayor and Council Members may be reimbursed for meals where the primary purpose of the meal is to conduct City-related business (other than simply meeting constituents). City Auditor review and approval is required. Council Members must describe the purpose of their business meal, e.g. issues discussed and how they relate to adopted priorities of Council, on the Statement of Municipal Purpose form and list the attendees. *Meals are reimbursed at the per diem rates as listed above, or the actual cost of the meal, whichever is lower.* (A.R. 3.9, page four) **Note that AB1234 requires that members of a legislative body shall**

<sup>4</sup> A.R. 3.14: <http://icobweb/AR/PDF/AR3-14.pdf>

<sup>5</sup> City Intranet: <http://icobweb/finance/GroupwareAP.FN-024&PettyCash.htm>

**provide brief reports on meetings attended at the expense of the local agency at the next regular meeting of the legislative body.**

- **Receipts:** The Mayor, Council Members, and Legislative Assistants must submit meal receipts. Meals are reimbursed at the per diem rates as listed above, or the actual cost of the meal, whichever is lower. (A.R. 3.9, page four)

cc: Sheila Soo, Administrative Assistant, Auditor's Office

RESOLUTION NO. 66,295-N.S.

CITY COUNCIL EXPENDITURE AND REIMBURSEMENT POLICIES

WHEREAS, each fiscal year, the City Council appropriates funds in the Mayor and Councilmember's departmental budgets to cover the costs of Mayor and Council staff and non-personnel expenditures which are reasonable and necessary for the performance of the duties of Mayor and Councilmember; and

WHEREAS, the Council needs to ensure that the expenditures are incurred and paid in conformity with the requirements of the City Charter; and

WHEREAS, AB 1234, adopted in 2005 and codified as Government Code Sections 53232, et. seq., requires that all cities adopt an expense reimbursement policy for Mayor and Council expenses; and

WHEREAS, on July 25, 2006, the City Council adopted Resolution No. 63,412-N.S. to establish the expenditure and reimbursement policy required by state law; and

WHEREAS, the Councilmember Office Budget Relinquishment and Grant Policy generally falls under the purview of the existing City Expenditures and Expense Reimbursement for Mayor and Council.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Councilmember Office Budget Relinquishment and Grant Policy enumerated in Exhibit A is incorporated by reference into the policy for City Expenditures and Expense Reimbursement for Mayor and Council.

BE IT FURTHER RESOLVED that Resolution No. 63,412-N.S. and any amendments thereto are hereby rescinded.

BE IT FURTHER RESOLVED that the policy concerning City Expenditures and Expense Reimbursement for Mayor and Council departments is hereby adopted to read as follows:

**CITY EXPENDITURES AND EXPENSE REIMBURSEMENT FOR MAYOR AND COUNCIL DEPARTMENTS**

**I. City Expenditures for Mayor and Council**

The Mayor and Council members shall purchase all office supplies, office equipment, furniture, computers, or any other product, good, or service for the actual and necessary expense of their office in the manner normally applicable to all other purchases of goods and services by the City. Such expenses may include membership in organizations of elected officials and the purchase of newspapers and periodicals that provide information needed for the performance of official duties.

## II. Reimbursement of Actual and Necessary Expense of Office

The Mayor and Council members and their staff may be reimbursed for the actual and necessary expenses for the categories of activities set forth below under "Authorized Activities."

### A. Authorized Activities.

Travel, meals and/or other food, incidentals, and lodging incurred in connection with the following types of activities set forth below constitute authorized expenses, as long as the other requirements of this Resolution are fulfilled:

1. Communicating with representatives of local, regional, state and national government on City policy positions;
2. Attending educational seminars designed to improve officials' skill and information levels, provided that a brief report of such seminar shall be made by the Mayor and Council at a subsequent Council meeting;
3. Participating in local, regional, state and national organizations of cities whose activities affect the City's interests;
4. Recognizing service to the City (for example, thanking a longtime employee with a retirement gift or celebration of nominal value and cost);
5. Attending City events; or events sponsored by organizations or entities whose activities affect the City's interests where the primary purpose of the event is to discuss subjects which relate to City business;
6. Implementing City approved policies;
7. Meals where the primary purpose of the meal is to conduct City-related business (other than simply meeting constituents) as long as the amount of such meal does not exceed the daily maximum as set forth in this Resolution and meets applicable federal and state standards as to when meal reimbursement may be allowed; and
8. Expenditures for these purposes approved in advance by a Mayor or Council member and undertaken by that person's staff.

Expenditures for all other activities require prior approval by the City Council and must meet an articulated municipal purpose that must be recited in the report proposing the expenditure and the resolution authorizing the expenditure. The policy for relinquishments and grants from Councilmember office budgets is enumerated in Exhibit A.

### B. Unauthorized Expenses

The following personal expenditures incurred by City officials shall not be reimbursed:

1. The personal portion of any trip, such as where the official is on his/her own vacation activities;
2. Political contributions or attendance at political or charitable events;
3. Family expenses, including partner's expenses when accompanying official on agency-related business, as well as children or pet-related expenses;
4. Entertainment expenses, including theater, movies (either in-room or at the theater), sporting events (including gym, massage and/or golf related

- expenses), or other recreational and cultural events;
- 5. Alcoholic beverages;
- 6. Non-mileage personal automobile expenses, including repairs, traffic citations, insurance or gasoline; and
- 7. Personal losses incurred while on City business.

Any questions regarding the propriety of a particular type of expense should be resolved by the City Council before the expense is incurred.

### C. Particular Types of Authorized Expenditures Defined

To conserve City resources and keep expenses within community standards for public officials, expenditures should adhere to the following guidelines. In the event that expenses are incurred which exceed these guidelines, the cost borne or reimbursed by the City will be limited to the costs that fall within the guidelines.

1. **Registration.** Registration fee charged for any authorized convention, conference, seminar or meeting is reimbursable.
2. **Transportation.** The most economical mode and class of transportation reasonably consistent with scheduling needs and cargo space requirements must be used, using the most direct and time-efficient route. Charges for rental-vehicles may be reimbursed under this provision if more than one City official is attending an out of town conference, and it is determined that sharing a rental vehicle is more economical than other forms of transportation. In making such determination, the cost of the rental vehicle, parking and gasoline will be compared to the combined cost of such other forms of transportation. Government and group rates must be used when available.
3. **Airfare.** Airfares that are equal to or less than those available through the Enhanced Local Government Airfare Program offered through the League of California Cities, the California State Association of Counties and the State of California are presumed to be the most economical and reasonable for purposes of reimbursement under this policy. Reimbursement for travel must not exceed the rates available through the League program as published by the California Department of General Services.
4. **Automobile.** Automobile mileage is reimbursed at Internal Revenue Service rates presently in effect. These rates are designed to compensate the driver for gasoline, insurance, maintenance, and other expenses associated with operating the vehicle. This amount does not include bridge and road tolls, which are also reimbursable. The Internal Revenue Service rates will not be paid for rental vehicles; only receipted fuel expenses will be reimbursed.
5. **Car Rental.** Rental rates that are equal or less than those published by the California Department of General Services shall be considered the most economical and reasonable for purposes of reimbursement under this policy.
6. **Taxis/Shuttles.** Taxis or shuttles fares may be reimbursed, including a 15 percent gratuity per fare, when the cost of such fares is equal or less than



the cost of car rentals, gasoline and parking combined, or when such transportation is necessary for time-efficiency.

7. **Lodging.** Lodging expenses will be reimbursed or paid for when travel on official City business reasonably requires an overnight stay. If such lodging is in connection with a conference, lodging expenses must not exceed the group rates. If lodging at the conference rate is not available, reimbursement will be based on either the published conference rate or government rates as published by the Federal General Services Agency, whichever is greater. Where no conference rate is published, the reimbursement will be based on the government rate or the median rate listed on priceline.com or similar service, whichever is greater.
8. **Meals.** Meal expenses and associated gratuities will be reimbursed at the rate set forth in Administrative Regulation 3.9.
9. **Telephone/Fax/Cellular.** Council members will be reimbursed for actual telephone and fax expenses incurred on City business. Telephone bills should identify which calls were made on City business. For calls made on an official's personal cell phone, the official may obtain reimbursement for business calls based on the following formula: minutes used on public business divided by the total minutes allowed under a monthly plan, plus long-distances charges for those calls.
10. **Airport Parking.** Airport parking must be used for travel exceeding 24-hours.
11. **Other Travel Related Expenses.** Baggage handling fees of up to \$1 per bag and gratuities of up to 15 percent will be reimbursed. Expenses for which City officials receive reimbursement from another agency are not reimbursable.
12. **Miscellaneous Office Products.** Notwithstanding the requirement in Section I, occasionally an elected officer or officer's staff may need to make an immediate small out of pocket purchase of office supplies that are normally ordered by the City for which payment is paid directly to the vendor. The City in accordance with the applicable City Manager Administrative Regulation concerning petty cash refunds may reimburse such purchases.

**D. Cash Advance Policy for Airfare and Hotel Only (per A.R, 3.9)**

From time to time, it may be necessary for an official to request a cash advance to cover anticipated expenses while traveling or doing business on the City's behalf. Such request for an advance should be submitted to the City Auditor, and copied to the City Manager, ten (10) working days prior to the need for the advance with the following information:

1. The purpose of the expenditure(s);
2. Whether the expenditure is for an authorized activity
3. The benefit to the residents of the City.
4. The anticipated amount of the expenditure(s) (for example, hotel rates, meal costs, and transportation expenses); and
5. The dates of the expenditure(s).

Any unused advance must be returned to the City within five (5) working days of the official's return, along with an expense report and receipts documenting how the advance was used in compliance with this expense policy.

**E. Expense Report Content and Submission Deadline**

1. A Statement of Expense must be completed, signed and submitted to the City Auditor for review and forwarding to the Finance Department for payment. The Statement of Expense must document that the expense in question met the requirements of this Resolution. For example, if the meeting is with a legislator, the local agency official should explain whose meals were purchased, what issues were discussed and how those relate to the City's adopted legislative positions and priorities.
2. Officials must submit their Statement of Expense reports to the Auditor's Office within 60 days of an expense being incurred, accompanied by receipts documenting each expense. Restaurant receipts, in addition to any credit card receipts, are also part of the necessary documentation. Receipts for gratuities and tolls under \$5 are not required.
3. Inability to provide such documentation in a timely fashion may result in the expense being borne by the official.

**F. Audits of Expense Reports**

All expenses are subject to verification by the City Auditor of compliance with this policy.

**G. Reports**

At the following City Council meeting, each official shall briefly report on meetings attended at City expense. If multiple officials attended, a joint report may be made.

**H. Compliance with Laws**

City officials should keep in mind that some expenditures may be subject to reporting under the Political Reform Act and other laws. All agency expenditures are public records subject to disclosure under the Public Records Act.

**I. Violation of This Policy**

Use of public resources or falsifying expense reports in violation of this policy may result in any or all of the following:

1. loss of reimbursement privileges;
2. a demand for restitution to the City;
3. the City's reporting the expenses as income to the elected official to state and federal tax authorities;
4. civil penalties of up to \$1,000 per day and three times the value of the resources used; and
5. prosecution for misuse of public resources.

\*\*\*\*\*

The foregoing Resolution was adopted by the Berkeley City Council on September 10, 2013 by the following vote:

Ayes: Anderson, Arreguin, Capitelli, Maio, Moore, Wengraf, Worthington, Wozniak and Bates.

Noes: None.

Absent: None.

  
\_\_\_\_\_  
Tom Bates, Mayor

Attest:   
\_\_\_\_\_  
Mark Numainville, CMC, City Clerk

## **Councilmember Office Budget Relinquishment and Grant Policy**

### Introduction – Limitations on the Expenditure of Public Funds

The basic purpose of the City as an entity is to exist and function as a *municipality*. This is also reflected in the Charter, which limits the Council's powers only to those "municipal affairs adequate to a complete system of local government". (Section 38.)

Exercises of this power may not be used solely to further the interests of particular individuals, although they may incidentally benefit private interests:

The exercise of the police power is available only for the purpose of promoting the general welfare, the interests of the public as distinguished from those of individuals or persons. It cannot be used to promote private gain or advantage, except so far as the same may also promote the public interest and welfare, and it is the latter, and not the former, effect which forms the basis of the power and warrants its exercise.  
(*Binford v. Boyd* (1918) 178 Cal. 458, 461.)

The Council's basic powers circumscribe its ability to spend public funds. In other words, the Council cannot spend public funds for purposes that are beyond its authority in the first place. Thus the City may only use its funds for municipal purposes. In any given case the crucial inquiry is whether an expenditure serves such a purpose.

The determination of what constitutes a public purpose is primarily a matter for the legislature, and its discretion will not be disturbed by the courts so long as that determination has a reasonable basis.  
(*County of Alameda v. Carlson* (1971) 5 Cal.3d 730, 745-746.)

If the courts find that there is a valid public purpose, they next examine whether the government's actions are reasonably related to effectuating this purpose. (*Tip Top Foods, Inc. v. Lyng* (1972) 28 Cal.App.3d 533, 541.) Public appropriations granted to private interests will not be considered unlawful diversions of public funds when the transaction serves the public interest, merely granting an incidental benefit to the private individual. (*Cane v. City and County of San Francisco* (1978) 78 Cal.App.3d 654, 660.)

### Criteria for Grants of City Funds from Councilmember Office Budgets

Relinquishments and grants for purposes and recipients that fall within the categories listed in Table 1 may be "pre-approved" each fiscal year by Council resolution.

Table 1.

| <b>Recipient</b>                                                                                                                                | <b>Purpose</b>                                                                                                                                                                                                                                                                             |
|-------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| The City (e.g., the Berkeley Public Library, the Berkeley Animal Shelter)                                                                       | Any purpose already being undertaken, because it already serves a public purpose. This includes both grants and attendance at fundraising events in capacity as the Mayor or a Councilmember.                                                                                              |
| BUSD and other public agencies operating in Berkeley                                                                                            | Any purpose already being undertaken, because it already serves a public purpose, assuming the activity is in Berkeley. This includes both grants and attendance at fundraising events in capacity as the Mayor or a Councilmember.                                                        |
| Entities with which the City is co-sponsoring a public event in Berkeley (e.g., Earth Day, Solano Stroll).                                      | City co-sponsorship suggests but is not conclusive of public purpose; public purpose would need to be stated, and all such events should be open to the public at no cost. Alternatively, a list of ongoing events that have been determined to serve a public purpose could be developed. |
| Entities in Berkeley to which the City already contributes funds for municipal purposes (e.g., affordable housing or social service nonprofits) | To advance the same public purposes for which the entities are funded. This includes both grants and attendance at fundraising events in capacity as the Mayor or a Councilmember.                                                                                                         |

Proposed relinquishments and grants that do not meet the criteria for pre-approval, but that meet an appropriate municipal purpose, may be approved by resolution with a majority vote of the City Council.

# CITY OF BERKELEY

## ADMINISTRATIVE REGULATIONS

|                          |            |
|--------------------------|------------|
| <b>A.R. NUMBER:</b>      | <b>3.4</b> |
| <b>ORIGINAL DATE:</b>    | 07/94      |
| <b>POSTING DATE:</b>     | 4/14/2009  |
| <b>PAGE 1 of 5 PAGES</b> |            |

### **SUBJECT: Purchasing Policy & Purchasing Manual**

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#### **PURPOSE**

To ensure that the City receives the most favorable price, quality, and/or service available for all purchases, while adhering to City Council directives. The Precautionary Principle (PP) and Environmentally Preferable Purchasing Policies (EP3) should be considered whenever feasible, and in accordance with the adopted budget. Furthermore, the complete AR provides City employees with appropriate procedures to knowledgeably participate in the procurement process. This is the Executive Summary of AR 3.4, with an introduction to procedures for the City's Purchasing Policy. The Purchasing Manual is the full AR 3.4, and includes the complete policy and procedures. The City Purchasing Manual can be found online at [Groupware – Finance: Purchasing Manual](#).

#### **POLICY**

It is the policy of the City Manager that all City purchases, with only specified and approved exceptions, shall be made through a competitive process. Regardless of the value of the purchase, more than one documented quotation, bid, or proposal is strongly encouraged. The City Council periodically sets or adjusts cost levels of purchases for Council review and approval, and the parameters for the formally documented competitive processes.

Responsibility for City Purchases rests with designated positions for implementation of this policy:

1. The City maintains a centralized General Services office through which all purchases of goods and services are processed. Each Department originates requests for procurement.
2. Departments are responsible for requesting the type and quality of product or service required. Sole and single source contracts are discouraged, but may be utilized if approved as provided in the Purchasing Manual. The FUNDS system maintains lists of vendors cross-referenced to commodities and services.
3. The General Services Division is ultimately responsible for determining the means of purchase and the appropriate vendor. All purchases made will be of a quality consistent with the ultimate use intended and will be based on best value to the City of Berkeley, not necessarily on the lowest obtainable price.
4. Only the City Manager has the authority to enter into a contract/agreement, except purchase orders, with a vendor. The authority to enter into a Purchase Order has been delegated to the General Services Manager.
5. A comprehensive list of City restrictions on procurement are addressed in Section I of the manual. In addition to those restrictions prescribed by law the following are prohibitions requested by City Council.

- 
- A) On January 29, 2008 Council requested the City Manager prohibit purchases from Chevron Corporation whenever possible.
  - B) On October 28, 2008 Council requested the City Manager research limiting the purchase of bottled water. In response, the City Manager directed staff to eliminate as much as possible the purchasing of individual bottles of water. Bottled water can still be purchased for emergency preparedness and for field events where health and safety are a concern. For all other events, carafes and tap water should be used.

### PROCEDURE

See the current version of the City Purchasing Manual, available online at [Groupware – Finance: Purchasing Manual](#), for complete information and procedures. The following is the table of contents for the Purchasing Manual:

- I. General Procedures, Responsibilities and Requirements
- II. Purchasing Requirements by Price
- III. Purchasing Procedures
- IV. Glossary of Terms
- V. Frequently Asked Questions (FAQs)
- VI. Requirement on Contracting with Certain Entities (Forms & Council Actions)
- VII. Council Guidelines on Purchasing Services and Goods
- VIII. How to Guide
- IX. Reports (In Development)
- X. Forms

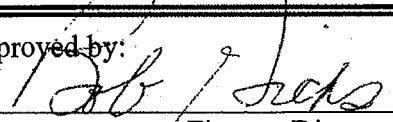
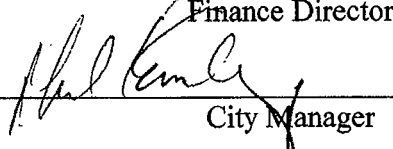
### DEFINITIONS

1. **Procurement:** Procurement refers to the process of managing activities associated with an organization's need to obtain the goods and services required for its operation. To ensure that the correct amount of the product or service is received at the appropriate time, specific steps are taken in the procurement process, including: value assurance; determining which commodities or services are best; choosing the right suppliers and vendors; negotiating the best prices; and awarding contracts. For General Services to conduct the procurement process responsibly, its functions include spend analysis, sourcing, supplier implementation, transaction management, category management, and supplier performance management.
2. **Purchasing:** The processing of a purchase order. The key steps in the process are: departments place and approve requisitions; General Services or departments find the item (sourcing); General Services issues the purchase order (PO); and General Services sends PO to vendor. Upon fulfillment of the order, the City is invoiced and the vendor is paid.

3. Purchasing Requisition (PR): A purchasing requisition is a document that instructs General Services to spend a designated and approved amount from a specific department/division budget account for needed goods or services.
4. Purchase Order (PO): A purchase order is used for the purchase of goods. The PO represents a contractual agreement that is enforceable under law. To have an enforceable contract there must be agreement of the parties, which consists of an offer by one party, acceptance of that offer by the other party, and mutual consideration.
5. Blue-Backed Contract: A blue backed contract is used for the purchase of services. A blue-backed contract represents a contractual agreement that is enforceable under law. To have an enforceable contract there must be agreement of the parties, which consists of an offer by one party, acceptance of that offer by the other party, and mutual consideration.

**Attachments:**

1. Purchasing Thresholds: Ordinance No. 6,875 – N.S.
2. Purchasing Thresholds: Ordinance No. 7,035 – N.S.

|                                                                                                                   |                                                                                                                                                                                                                                                                       |
|-------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>RESPONSIBLE DEPARTMENT:</b><br/>Finance Department</p> <p><b>TO BE REVIEWED/REVISED:</b><br/>Every year</p> | <p>Approved by:</p> <p><br/>_____<br/>Finance Director</p> <p><br/>_____<br/>City Manager</p> |
|-------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|



ATTACHMENT 1

ORDINANCE NO. 6,875-N.S.

AMENDING BERKELEY MUNICIPAL CODE SECTION 7.18.010B REGARDING EXPENDITURES FOR SPECIFIC IMPROVEMENTS, INCLUDING PLAY AREA IMPROVEMENTS AND EQUIPMENT WHICH EXCEED \$200,000; AMENDING SECTION 7.18.010C REGARDING EXPENDITURES FOR THE PURCHASE OF SUPPLIES, EQUIPMENT, AND MATERIALS WHICH EXCEED \$100,000; AND AMENDING SECTION 7.18.020A REGARDING EXPENDITURE LIMITATIONS IN CASE OF EMERGENCY

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Section 7.18.010 is amended as follows:

**Section 7.18.010 Expenditures pursuant to Chapter Article XI, Sections 67 and 67.5.**

A. Except as otherwise provided in this Title, expenditures pursuant to Article XI, Sections 67 and 67.5 of the Charter of the City of Berkeley, which exceed the amount of \$25,000 shall require Council approval.

B. Expenditures for specific improvements (public projects), including play area improvements and equipment in public parks which exceed the amount of \$200,000 shall require Council approval pursuant to Article XI, Section 67 of the Charter of the City of Berkeley.

C. Expenditures for the purchase of supplies, equipment, and materials which exceed the amount of \$100,000 shall require Council approval.

Section 2. That Berkeley Municipal Code Section 7.18.020A is amended as follows:

**Section 7.18.020 Expenditures pursuant to Charter Article XI, Section 67.4 Emergencies.**

A. Expenditures pursuant to Article XI, Section 67.4 of the Charter of the City which exceed the amount of \$100,000 shall require Council approval; and expenditures for public construction projects and playground improvements and equipment which exceed the amount of \$200,000 shall require Council approval.

B. Notwithstanding subsection A of this section, in the event of a declared emergency under Chapter 2.88, the expenditure limitation under Article XI, Section 67.4 of the Charter of the City shall be an amount not exceeding the amount appropriated by the Council in the most recent appropriation ordinance for the fund from which an expenditure is made and for the purpose authorized for such fund.

C. Whenever purchases are made pursuant to this section, the City Manager shall promptly inform the Council as to the nature and amount.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

\*\*\*\*\*

ATTACHMENT 2

ORDINANCE NO: 7,035-N.S.

AMENDING BERKELEY MUNICIPAL CODE SECTION 7.18.010 REGARDING EXPENDITURES FOR SERVICE CONTRACTS TO INCREASE CITY MANAGER'S AUTHORITY

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Section 7.18.010 is amended to read as follows:

Section 7.18.010 Expenditures pursuant to Chapter Article XI, Sections 67 and 67.5.

A. Except as otherwise provided in this Title, expenditures pursuant to Article XI, Sections 67 and 67.5 of the Charter of the City of Berkeley, which exceed the amount of \$50,000 shall require Council approval.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on April 22, 2008, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Anderson, Capitelli, Maio, Moore, Olds, Wozniak and Bates.

Noes: Spring and Worthington.

Absent: None.

At a regular meeting of the Council of the City of Berkeley held on May 6, 2008, this Ordinance was adopted by the following vote:

Ayes: Anderson, Capitelli, Maio, Moore, Olds, Wozniak and Bates.

Noes: Spring and Worthington.

Absent: None.

ATTEST: [Signature] Deanna Despain, Deputy City Clerk

[Signature] Tom Bates, Mayor

Date signed: [Signature]

**A.R. NUMBER: 3.9**  
**ORIGINAL DATE: 07/94**  
**POSTING DATE: 11/3/16**  
**PAGE 1 of 9 PAGES**

# **CITY OF BERKELEY**

## **ADMINISTRATIVE REGULATIONS**

**SUBJECT: Attendance and Payment of Expenses Associated with  
Conferences, Meetings, Seminars, Trainings, and Workshops**

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### **PURPOSE**

To establish policies and procedures for City staff to obtain approval to attend conferences, meetings, seminars, trainings, and workshops; and to establish procedures for the City's direct payment of authorized expenses incurred by an individual for attendance at an approved event or meeting. Obtaining approval of an Attendance & Travel (A&T) Request for an event or meeting, along with associated expenses, ensures that appropriate supervisors and Department Directors have determined an employee's attendance at an event or meeting benefits the City, and that expenses are consistent and in line with the department's adopted budget.

This Administrative Regulation (AR) also complements **Resolution No. 66,295, City Council Expenditure and Reimbursement Policies** for the Mayor and Council (Attachment B); and **Resolution No. 63,413, Establishing Travel and Training Reimbursement Policy for Board and Commission Members** of the Rent Stabilization Board, Board of Library Trustees, and members of other boards or commissions (Attachment C).

### **POLICY**

It is the policy of the City Manager to authorize Department Directors and Supervisors to approve an employee's request to attend, and to receive payment for expenses associated with conferences, meetings, seminars, training, and workshops.

### **Table of Contents**

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## I. APPROVALS

**Note: Employee Must Submit and Obtain Approval for A&T Request before incurring any allowable expenses**

City Approval to attend and incur authorized expenses for an eligible event is based on the following factors:

- A. Expectation that the City will derive a specific benefit from staff attendance.
- B. Employee submission of the authorized A&T Request form (the current version in Groupware), and receipt of approval from her/his Supervisor &/or Department Director in advance of an authorized event, including approval for all associated expenses.
- C. All expenditures and reimbursements for the Mayor and Council must adhere to Resolution No. 66,295 and be approved by the City Auditor.
- D. For routine and, or, recurring meetings an A&T Request must be submitted, approved, and on file in the department in advance of the initial date, and must be renewed annually for each fiscal year.
- E. Department Directors are to complete and submit an A&T Request; no other signature is required for approval.
- F. Exceptions to use of the A&T Request form are: Mayor, Council, and Legislative Assistants (when allowed under Resolution No. 66,295); and members of the Rent Stabilization Board, and Board of Library Trustees. Resolution No. 66,295 or Resolution No. 63,413 governs their approvals, expenditures, and related matters.
- G. Expenditures are provided for in the adopted budget for the employee's department. For specific procedures, see item III. Allowable Expenses.

## II. EXPENDITURES BASICS

Expenditures must be documented in accordance with all related City ARs and other associated policies, using current forms (published in Groupware), including and not limited to:

- AR 3.4 Purchasing Manual: Employees and Mayor/Council must make full use of the City's Procurement procedures and submit purchase requisitions to generate payment for registration prior to travel. Note: Expenses for Board/Commission members and other non-staff or elected officials eligible to attend an event pursuant to the standards in Resolution No. 63,413 must have payments processed by the designated board or commission Secretary, using FN-024 Payment Vouchers through Accounts Payable.
- AR 3.14 FN-024 Voucher Processing
- AR 7.2 Use of Private Vehicles and Mileage Reimbursement
- Auto Record for Mileage Reimbursement: for further details, see AR 7.2 and Transportation: Private Vehicle, below.

- City Council Resolution No. 66,295 City Council Expenditure and Reimbursement Policies.
- City Council Resolution No. 63,413 Establishing Travel and Training Reimbursement Policy for Board and Commission Members.

In addition:

- Statement of Expense forms and receipts, for reconciliation of an advance &/or reimbursement of expenses incurred, must be submitted to Finance – Accounts Payable within 60 calendar days (30 days for Council/Commission, unless revised) after conclusion of the event. Statement of Expense forms and receipts submitted after this date may not be processed, and individuals assume full, personal responsibility for the costs they incurred.
- Advances or reimbursements to an employee are restricted to expenses for that employee only – they may not cover the expenses of any other employee. Exception to this restriction is for reimbursements only of expenses for Mayor and Council and their Legislative Assistants.

See item V. Advance Payments and Reconciliation.

### III. ALLOWABLE EXPENSES

Expenditures should adhere to the following guidelines. In the event that expenses are incurred that exceed these guidelines, the cost borne or reimbursed by the City will be limited to those that fall within these guidelines, unless approved by an appropriate, designated authority. Proof of payment for all expenses must be provided when reconciling the Statement of Expense form, except as indicated.

- A. **Registration:** Registration fee charged for an authorized conference, meeting, seminar, training or workshop is allowable. Employees should register in a timely manner to take advantage of registration discounts. Payments can be made by Purchase Orders (PO). See also: Payments by Check Using a Purchase Order, below.
- B. **Transportation:** Employees must use the most economical mode and class of transportation reasonably consistent with scheduling needs, coordination with other employees traveling together, and cargo space requirements, and following the most direct and time-efficient route incorporating these factors. If an employee chooses a more expensive mode of travel based on personal criteria, reimbursement will be for the lesser cost of transportation.
  1. **Public Transit** should be used for travel to events and meetings outside the City of Berkeley and in other locations, where accessible by transit. Receipts are not required for these expenses.
  2. **Fleet Vehicle:** see AR 7.1 Use of Fleet Vehicles for details.
  3. **Private Vehicle:** see AR 7.2 Use of Private Vehicles & Mileage Reimbursement for details. If use of a private vehicle is authorized, mileage is reimbursed at IRS

rates currently in effect, in addition to parking fees, bridge and road tolls, which are also reimbursable.

- Unless an alternative is proposed by a department and acceptable to Accounts Payable, expenses for approved use of a private vehicle should be submitted with other expenses associated with attendance at an authorized event or meeting on the Statement of Expense.
4. **Rental Vehicle** charges may be reimbursed under this provision with Department Director approval. Rental fees, receipted fuel expenses, and authorized parking fees, **bridge and road tolls will be reimbursed**.
  5. **Air/Train** fares for reimbursement under this policy should be the most economical and reasonable amount available after the Attendance and Travel Request is approved.
  6. **Travel to/from Airports: Employees will be reimbursed for the most economical and** appropriate means; if there's any question about this, obtain department approval before incurring the expense.
  7. **Taxi or Shuttle** fares may be reimbursed with receipts.
- C. **Lodging:** Cost of accommodations will be reimbursed or paid for when travel on official City business reasonably requires an overnight stay.
1. When travel status is more than twelve (12) hours; or when the location is more than 50 miles from the employee's worksite and residence based on odometer, MapQuest or other reliable documentation; or when an event begins before 8:00am or ends after 5:00pm and a documented evening event requires the employee's attendance.
  2. If lodging is associated with a conference, employees should register in a timely manner to take advantage of discounts or conference rates. Lodging expenses that exceed the group rate published by the conference sponsor must be approved by an appropriate, designated authority.
  3. For non-conference lodging, travelers must request government rates, when available and must be authorized by Department Director.
  4. Costs to upgrade rooms from the basic accommodations provided are not reimbursable, unless authorized by the Department Director.
- D. **Meals: Meals are reimbursable only if travel status is over twelve hours or requires overnight lodging.**
1. **Meal expenses**, including non-alcoholic beverages, tax, and tips, are reimbursable up to a total per diem of \$51: the amounts per meal are \$10 breakfast; \$15 lunch; \$26 dinner; and receipts are not required. Expenses above the authorized amounts are the responsibility of the employee.
  2. **Breakfast &/or evening meetings with meals**, which are scheduled before conferences or meetings commence, or after they adjourn, and that require the employee's attendance, will be considered for reimbursement when

documentation is submitted reflecting the requirement of the employee's attendance for the meeting and location.

3. **Meals included with registration or lodging that are taken at additional expense** will only be considered for reimbursement at the authorized per diem by approval of the Department Director when documentation is submitted reflecting the necessity of this expense, such as:
  4. **Meals during approved travel time** to/from an event or meeting destination may be reimbursable with approval by the employee's Department Director, at the authorized amount for the individual meal(s) (see Meal expenses, above).
  5. **NOTE:** Business meals with other employees, commissioners or elected officials of the City of Berkeley are specifically NOT reimbursable. Exceptions for Mayor and Council must be reviewed and approved by the City Auditor. City funds may also NOT be used for expenses related to holiday activities or other office parties or events, unless exempted by AR 3.3.
- E. **Other Travel Related Expenses:** Expenses for which City staff or officials receive reimbursement from another agency are not reimbursable.

#### IV. PAYMENTS BY CHECK USING A PURCHASE ORDER

Generally, General Services – Procurement will process a PO within three working days, and a check could be issued in the next AP check run. It is the department responsibility to notify Procurement staff when the requisition is approved to ensure timely processing of the PO in order to issue the check promptly. Departments may have internal procedures that require additional time, and employees are expected to familiarize themselves with these internal deadlines.

- A. Expenses for registration should be paid by check using a Purchase Order (PO). This includes online registration when "pay by check" is an option.
- B. Use of an employee's credit card or personal check for registration is only permitted and eligible for reimbursement when time does not permit issuing a City check for payment, and is approved by the Department Director.
- C. Resolution No. 66,295 or Resolution No. 63,413 governs any exceptions for Mayor and Council, or for the Rent Stabilization Board or Board of Library Trustees.
- D. Expenses for accommodations, if lodging is included in the event package, should be paid with the registration fee using a Purchase Order (PO).

#### V. ADVANCE PAYMENTS & RECONCILIATION

An approved A&T Request is required for any request for an advance. Advances are extended only to employees in classifications that are not included on the list of **Classifications NOT eligible for advances**. Advances are limited to approved air/train fare and lodging only.

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In addition:

- Registration or meals, and other transportation expenses may not be advanced to any employee.
- Advances to an employee are restricted to expenses for that employee only – they may not cover the expenses of another employee.
- Departments must maintain a Tracking Worksheet that documents employees' advance requests and reconciliations. These Worksheets must be submitted to the Auditor's Office by the 10<sup>th</sup> working day of each calendar quarter (January, April, July, October), along with copies of correspondence to those employees who have advance reconciliations outstanding. The Auditor's Office will review departmental travel advance worksheets on a sample basis.
- If an advance is issued to an employee and the employee does not attend the event, whether due to personal circumstances, the event being cancelled, or the City intervened to cancel the employee's attendance, the employee must seek recovery of charges and remit the full refunded amount to the City.

**A. Requesting an Advance**

1. Requests for an advance must be submitted to Finance – Accounts Payable at least 10 working days before the event start date. Employees are expected to familiarize themselves with any additional internal deadlines or procedures their departments may require.
2. Requests for an advance must include:
3. Approved Attendance and Travel Request, with documentation showing dates and time, and rates offered for travel and accommodations, including meals provided with the event.
4. Completed FN-024 Payment Voucher (current version on Groupware) with required signatures of approval and all specified back-up documentation. See AR 3.14 for details.

**B. Reconciling an Advance**

1. Each travel advance must be reconciled before an employee can request another; employees are not eligible for multiple advances.
2. Attendance must be documented in the form of a receipt, sign in sheet, or certificate of attendance.
3. Employees must submit a Statement of Expense and receipts to appropriate department staff within 60 calendar days of conclusion of the event (30 days for Council/Commission, unless revised). Statement of Expense forms and receipts submitted after this date may not be processed, and the employee assumes full, personal responsibility for the costs she/he incurred. If an employee fails to reconcile an advance within this timeframe, the City may take disciplinary action.



4. When an advance exceeds the expenses incurred, the employee is responsible for paying the difference by cash or check payable to the City of Berkeley for the balance at the time of reconciliation. Payment is submitted to the City Treasury and a copy of the CR edit report must be attached to the employee's Statement of Expense, in addition to all required original receipts.
5. When an advance is less than the expenses incurred, departments submit an FN-024 Payment Voucher payable to the employee for the difference, along with the employee's Statement of Expense and original receipts for expenses incurred.

## VI. EXPENSE REIMBURSEMENT

See Allowable Expenses, above, for expenses that qualify for reimbursement, and the acceptable rates and limitations for those expenses. To obtain reimbursement of approved expenses incurred:

- A. Employees must submit a completed FN-024 Payment Voucher, and Statement of Expense, and receipts to appropriate department staff within 60 calendar days after conclusion of the event. Statement of Expense forms and receipts submitted after this date may not be processed, and the employee assumes full, personal responsibility for the costs she/he incurred.
- B. Reimbursements to an employee are restricted to expenses for that employee only – they may not cover the expenses of another employee.
- C. Tips, except where documented, are not reimbursable.
- D. Reimbursements are processed by FN-024 Payment Voucher (see AR 3.14) and must include:
  1. Authorized signature/s (see AR 3.12).
  2. Attendance and Travel Request approved by Supervisor &/or Department Director.
  3. Documentation of attendance at the event or meeting (receipt, certificate, sign-in sheet).
  4. Statement of Expense, completed with all required original receipts.
  5. Auto Record for Mileage Reimbursement, if use of a private vehicle was authorized (see AR 7.2 for details and instructions) and these are the only expenses for reimbursement associated with the event.

## VII. OTHER EXCEPTIONS

Any exception not already identified within other sections of this AR must be submitted to, and approved by the employee's Department Director. For Mayor, Council, Legislative Assistants, Rent Stabilization Board or Board of Library Trustees, exceptions must be approved as set forth in the appropriate Resolution.

Employees may request an exception to the reimbursement rules when original receipts, or other proof of payment such as a canceled check, cannot be provided to verify expenses. The Supervisor and Department Director (or designee) must approve requests for an exception that require the "Approval of Payment Exception" portion of the Statement of Expense and state the necessity for the exception. In addition, the Finance Director must also approve any payment exceptions.

**VIII. DEFINITIONS** (related to Attendance at Conferences, Workshops, Training, Seminars, Meetings)

**Advance:** Payment to an employee with an approved Attendance & Travel Request to purchase air/train travel and qualifying lodging reservations and incur expenses associated with attending the forthcoming event or meeting. See procedures for Requesting an Advance, and Reconciling an Advance.

**Event: Conference:** A gathering of persons associated with a professional, membership or support organization for discussing matters of common concern, which may include presentations, programs and exhibits related to municipal government &/or related functions.

**Event: Workshop, Training Session, or Seminar:** A usually brief intensive educational program for a relatively small group of people that focuses on techniques and skills in a particular field.

**Meeting: Non-Routine Meeting:** A formally arranged gathering for a common purpose that the City will derive a specific benefit from staff attendance.

**Meeting: Routine or Recurring Meeting:** A gathering that occurs in predictable intervals for a common purpose, where attendance is part of the employee's usual role and responsibilities.

**Overnight Stay:** Out-of-town accommodations (room and specified meals) required for an employee to attend an approved event or eligible meeting (see Allowable Expenses for details).

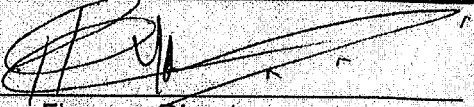
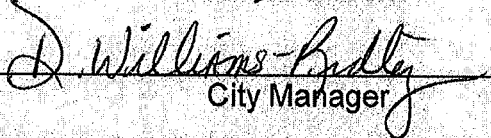
**Payment Documentation:** Documentation is required to provide tangible proof of payment for approved goods or services, and usually specifies: issuer and receiver of receipt; date; purpose or commodity; and dollar amount of the expense. Acceptable back-up for reimbursable expenses includes: original receipts, cancelled checks (copies of front and back), proof of credit card charge and payment (receipt and copy of statement), and printed online payment confirmation with name and amount. Photocopies of receipts are not acceptable.

**Point of Origin:** Location, if other than Worksite, from which authorized travel may originate or to which travel may conclude, related to attendance at an approved event and calculation of expenses for reimbursement.

**Worksite:** Main office or work location where an employee usually performs her/his regular job duties with the City of Berkeley.

**IX. ATTACHMENTS/LINKS**

- A. Classifications NOT eligible for advances
- B. Resolution 66,295 (Mayor/Council Departments)
- C. Resolution 63,413 (Rent Board/Library Trustees)
- D. Attendance & Travel Request
- E. Statement of Expense
- F. AR 7.2 Use of Private Vehicles & Mileage Reimbursement
- G. Auto Record for Mileage Reimbursement
- H. FN-024 Payment Voucher

|                                                      |                                                                                                                       |
|------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------|
| <b>RESPONSIBLE DEPARTMENT:</b><br>Finance Department | Approved by: <br>Finance Director |
| <b>TO BE REVIEWED/REVISED:</b><br>Every year         | <br>City Manager                  |

## Attachment A

| JOB CODE | REP UNIT | CLASSIFICATION TITLES INELIGIBLE FOR A TRAVEL ADVANCE | JOB CODE | REP UNIT | CLASSIFICATION TITLES INELIGIBLE FOR A TRAVEL ADVANCE |
|----------|----------|-------------------------------------------------------|----------|----------|-------------------------------------------------------|
| 1350     | M        | Accounting Manager                                    | 1374     | Z1       | Economic Development Manager                          |
| 1317     | M        | Animal Services Manager                               | 2923     | M        | Economic Development Project Mgr.                     |
| 1213     | Z1       | Assistant City Attorney                               | 1417     | Z1       | Emergency Services Manager                            |
| 1118     | Z1       | Assistant City Manager                                | 1402     | Z1       | Employee Relations Officer                            |
| 8174     | Z1       | Assistant Fire Chief                                  | 1426     | M        | Energy Officer                                        |
| 1801     | Z1       | Assistant to the City Manager                         | 1348     | M        | Equipment Superintendent                              |
| 1301     | Z1       | Audit Manager                                         | 1121     | Z5       | Executive Director of Rent Board                      |
| 1323     | Z1       | Budget Manager                                        | 1344     | M        | Facilities Maintenance Superintendent                 |
| 1306     | M        | Building and Safety Manager                           | 8155     | B        | Fire Apparatus Operator EMT                           |
| 1320     | Z1       | Capital Improvement Programs Manager                  | 8167     | B        | Fire Captain EMT                                      |
| 1107     | Z1       | City Attorney                                         | 1105     | Z1       | Fire Chief                                            |
| 1102     | Z1       | City Auditor                                          | 8158     | B        | Fire Lieutenant EMT                                   |
| 1120     | Z1       | City Clerk                                            | 8164     | B        | Fire Lieutenant Training EMT                          |
| 1101     | Z1       | City Manager                                          | 8160     | B        | Fire Prevention Inspector I EMT                       |
| 1315     | M        | Customer Services Manager                             | 8161     | B        | Fire Prevention Inspector II EMT                      |
| 2303     | Z2       | Deputy City Attorney II                               | 1418     | Z1       | Fire Prevention Manager                               |
| 2311     | Z2       | Deputy City Attorney III                              | 1321     | M        | General Services Manager                              |
| 1366     | Z1       | Deputy City Auditor for Payroll Mgmt.                 | 1377     | M        | Hazardous Materials Manager                           |
| 1219     | Z1       | Deputy City Clerk                                     | 1223     | Z1       | Health Officer                                        |
| 1103     | Z1       | Deputy City Manager                                   | 1224     | Z1       | Health Officer (Cert)                                 |
| 1227     | Z1       | Deputy Director of Finance                            | 1363     | M        | Housing Authority Manager                             |
| 1229     | Z1       | Deputy Director of Health & Human Services            | 1352     | M        | Housing Services Manager                              |
| 1211     | Z1       | Deputy Director of Library Services                   | 1380     | Z1       | Human Resources Manager                               |
| 1228     | Z1       | Deputy Director of Parks, Recreation & Waterfront     | 1221     | Z1       | Information Systems Manager                           |
| 1230     | Z1       | Deputy Director of Planning                           | 1354     | M        | Land Use Planning Manager                             |
| 1205     | Z1       | Deputy Director of Public Works                       | 1803     | Z5       | Library Building Project Manager                      |
| 1209     | Z1       | Deputy Director of Public Works (Reg)                 | 1466     | Z2       | Library Financial Manager                             |
| 1204     | Z1       | Deputy Fire Chief                                     | 1465     | Z5       | Library Network Administrator                         |
| 8182     | B        | Deputy Fire Marshal EMT                               | 1373     | M        | Manager of Economic Development                       |
| 1203     | Z1       | Deputy Police Chief                                   | 1310     | M        | Manager of Engineering                                |
| 1123     | Z1       | Director of Community Development                     | 1368     | M        | Manager of Environmental Health                       |
| 1104     | Z1       | Director of Finance                                   | 1360     | M        | Manager of Health Promotion                           |
| 1125     | Z1       | Director of Health and Human Services                 | 1339     | M        | Manager of Mental Health Services                     |
| 1126     | Z1       | Director of Housing                                   | 1362     | M        | Manager of Program Planning and Administration        |
| 1108     | Z1       | Director of Human Resources                           | 8186     | Z1       | Paramedic Program Supervisor                          |
| 1127     | Z1       | Director of Information Technology                    | 8111     | B        | Paramedic Supervisor I                                |
| 1115     | Z1       | Director of Library Services                          | 8113     | B        | Paramedic Supervisor II                               |
| 1112     | Z1       | Director of Parks, Recreation & Waterfront            | 1327     | M        | Parking Services Manager                              |
| 1124     | Z1       | Director of Planning                                  | 1332     | M        | Parks Superintendent                                  |
| 1111     | Z1       | Director of Public Works                              | 1326     | M        | Planning Manager                                      |

| JOB CODE | REP UNIT | CLASSIFICATION TITLES INELIGIBLE FOR A TRAVEL ADVANCE | JOB CODE | REP UNIT | CLASSIFICATION TITLES INELIGIBLE FOR A TRAVEL ADVANCE |
|----------|----------|-------------------------------------------------------|----------|----------|-------------------------------------------------------|
| 1307     | M        | Disability Programs Manager                           |          |          |                                                       |
| 8148     | E        | Police Captain                                        | 1353     | M        | Revenue Collection Manager                            |
| 1110     | Z1       | Police Chief                                          | 2716     | Z2       | Senior Human Resources Analyst                        |
| 8145     | F        | Police Inspector                                      | 1325     | M        | Seniors Program Administrator                         |
| 8147     | F        | Police Lieutenant                                     | 1314     | M        | Solid Waste and Recycling Manager                     |
| 1473     | Z1       | Police Review Commission Officer                      | 2316     | Z2       | Staff Attorney II                                     |
| 8142     | F        | Police Sergeant                                       | 2317     | Z2       | Staff Attorney III                                    |
| 2458     | Z1       | Psychiatrist Supervisor                               | 1404     | M        | Supervising Civil Engineer                            |
| 1322     | M        | Public Safety Business Manager                        | 1476     | M        | Supervising Systems Analyst                           |
| 1312     | M        | Public Works Maintenance Superintendent               | 1340     | M        | Supervising Traffic Engineer                          |
| 1475     | M        | Real Property Administrator                           | 2712     | Z2       | Training Officer                                      |
| 2890     | M        | Recycling Program Manager                             | 1369     | M        | Waterfront Manager                                    |
|          |          |                                                       |          |          |                                                       |

**RESOLUTION NO. 66,295–N.S.**

**CITY COUNCIL EXPENDITURE AND REIMBURSEMENT POLICIES**

WHEREAS, each fiscal year, the City Council appropriates funds in the Mayor and Councilmember's departmental budgets to cover the costs of Mayor and Council staff and non-personnel expenditures which are reasonable and necessary for the performance of the duties of Mayor and Councilmember; and

WHEREAS, the Council needs to ensure that the expenditures are incurred and paid in conformity with the requirements of the City Charter; and

WHEREAS, AB 1234, adopted in 2005 and codified as Government Code Sections 53232, et. seq., requires that all cities adopt an expense reimbursement policy for Mayor and Council expenses; and

WHEREAS, on July 25, 2006, the City Council adopted Resolution No. 63,412-N.S. to establish the expenditure and reimbursement policy required by state law; and

WHEREAS, the Councilmember Office Budget Relinquishment and Grant Policy generally falls under the purview of the existing City Expenditures and Expense Reimbursement for Mayor and Council.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Councilmember Office Budget Relinquishment and Grant Policy enumerated in Exhibit A is incorporated by reference into the policy for City Expenditures and Expense Reimbursement for Mayor and Council.

BE IT FURTHER RESOLVED that Resolution No. 63,412–N.S. and any amendments thereto are hereby rescinded.

BE IT FURTHER RESOLVED that the policy concerning City Expenditures and Expense Reimbursement for Mayor and Council departments is hereby adopted to read as follows:

**CITY EXPENDITURES AND EXPENSE REIMBURSEMENT FOR MAYOR AND COUNCIL DEPARTMENTS**

**I. City Expenditures for Mayor and Council**

The Mayor and Council members shall purchase all office supplies, office equipment, furniture, computers, or any other product, good, or service for the actual and necessary expense of their office in the manner normally applicable to all other purchases of goods and services by the City. Such expenses may include membership in organizations of elected officials and the purchase of newspapers and periodicals that provide information needed for the performance of official duties.

## II. Reimbursement of Actual and Necessary Expense of Office

The Mayor and Council members and their staff may be reimbursed for the actual and necessary expenses for the categories of activities set forth below under "Authorized Activities."

### A. Authorized Activities.

Travel, meals and/or other food, incidentals, and lodging incurred in connection with the following types of activities set forth below constitute authorized expenses, as long as the other requirements of this Resolution are fulfilled:

1. Communicating with representatives of local, regional, state and national government on City policy positions;
2. Attending educational seminars designed to improve officials' skill and information levels, provided that a brief report of such seminar shall be made by the Mayor and Council at a subsequent Council meeting;
3. Participating in local, regional, state and national organizations of cities whose activities affect the City's interests;
4. Recognizing service to the City (for example, thanking a longtime employee with a retirement gift or celebration of nominal value and cost);
5. Attending City events; or events sponsored by organizations or entities whose activities affect the City's interests where the primary purpose of the event is to discuss subjects which relate to City business;
6. Implementing City approved policies;
7. Meals where the primary purpose of the meal is to conduct City-related business (other than simply meeting constituents) as long as the amount of such meal does not exceed the daily maximum as set forth in this Resolution and meets applicable federal and state standards as to when meal reimbursement may be allowed; and
8. Expenditures for these purposes approved in advance by a Mayor or Council member and undertaken by that person's staff.

Expenditures for all other activities require prior approval by the City Council and must meet an articulated municipal purpose that must be recited in the report proposing the expenditure and the resolution authorizing the expenditure. The policy for relinquishments and grants from Councilmember office budgets is enumerated in Exhibit A.

### B. Unauthorized Expenses

The following personal expenditures incurred by City officials shall not be reimbursed:

1. The personal portion of any trip, such as where the official is on his/her own vacation activities;
2. Political contributions or attendance at political or charitable events;
3. Family expenses, including partner's expenses when accompanying official on agency-related business, as well as children or pet-related expenses;
4. Entertainment expenses, including theater, movies (either in-room or at the theater), sporting events (including gym, massage and/or golf related

- expenses), or other recreational and cultural events;
- 5. Alcoholic beverages;
- 6. Non-mileage personal automobile expenses, including repairs, traffic citations, insurance or gasoline; and
- 7. Personal losses incurred while on City business.

Any questions regarding the propriety of a particular type of expense should be resolved by the City Council before the expense is incurred.

### C. Particular Types of Authorized Expenditures Defined

To conserve City resources and keep expenses within community standards for public officials, expenditures should adhere to the following guidelines. In the event that expenses are incurred which exceed these guidelines, the cost borne or reimbursed by the City will be limited to the costs that fall within the guidelines.

1. **Registration.** Registration fee charged for any authorized convention, conference, seminar or meeting is reimbursable.
2. **Transportation.** The most economical mode and class of transportation reasonably consistent with scheduling needs and cargo space requirements must be used, using the most direct and time-efficient route. Charges for rental-vehicles may be reimbursed under this provision if more than one City official is attending an out of town conference, and it is determined that sharing a rental vehicle is more economical than other forms of transportation. In making such determination, the cost of the rental vehicle, parking and gasoline will be compared to the combined cost of such other forms of transportation. Government and group rates must be used when available.
3. **Airfare.** Airfares that are equal to or less than those available through the Enhanced Local Government Airfare Program offered through the League of California Cities, the California State Association of Counties and the State of California are presumed to be the most economical and reasonable for purposes of reimbursement under this policy. Reimbursement for travel must not exceed the rates available through the League program as published by the California Department of General Services.
4. **Automobile.** Automobile mileage is reimbursed at Internal Revenue Service rates presently in effect. These rates are designed to compensate the driver for gasoline, insurance, maintenance, and other expenses associated with operating the vehicle. This amount does not include bridge and road tolls, which are also reimbursable. The Internal Revenue Service rates will not be paid for rental vehicles; only receipted fuel expenses will be reimbursed.
5. **Car Rental.** Rental rates that are equal or less than those published by the California Department of General Services shall be considered the most economical and reasonable for purposes of reimbursement under this policy.
6. **Taxis/Shuttles.** Taxis or shuttles fares may be reimbursed, including a 15 percent gratuity per fare, when the cost of such fares is equal or less than



- the cost of car rentals, gasoline and parking combined, or when such transportation is necessary for time-efficiency.
7. **Lodging.** Lodging expenses will be reimbursed or paid for when travel on official City business reasonably requires an overnight stay. If such lodging is in connection with a conference, lodging expenses must not exceed the group rates. If lodging at the conference rate is not available, reimbursement will be based on either the published conference rate or government rates as published by the Federal General Services Agency, whichever is greater. Where no conference rate is published, the reimbursement will be based on the government rate or the median rate listed on priceline.com or similar service, whichever is greater.
  8. **Meals.** Meal expenses and associated gratuities will be reimbursed at the rate set forth in Administrative Regulation 3.9.
  9. **Telephone/Fax/Cellular.** Council members will be reimbursed for actual telephone and fax expenses incurred on City business. Telephone bills should identify which calls were made on City business. For calls made on an official's personal cell phone, the official may obtain reimbursement for business calls based on the following formula: minutes used on public business divided by the total minutes allowed under a monthly plan, plus long-distances charges for those calls.
  10. **Airport Parking.** Airport parking must be used for travel exceeding 24-hours.
  11. **Other Travel Related Expenses.** Baggage handling fees of up to \$1 per bag and gratuities of up to 15 percent will be reimbursed. Expenses for which City officials receive reimbursement from another agency are not reimbursable.
  12. **Miscellaneous Office Products.** Notwithstanding the requirement in Section I, occasionally an elected officer or officer's staff may need to make an immediate small out of pocket purchase of office supplies that are normally ordered by the City for which payment is paid directly to the vendor. The City in accordance with the applicable City Manager Administrative Regulation concerning petty cash refunds may reimburse such purchases.

**D. Cash Advance Policy for Airfare and Hotel Only (per A.R, 3.9)**

From time to time, it may be necessary for an official to request a cash advance to cover anticipated expenses while traveling or doing business on the City's behalf. Such request for an advance should be submitted to the City Auditor, and copied to the City Manager, ten (10) working days prior to the need for the advance with the following information:

1. The purpose of the expenditure(s);
2. Whether the expenditure is for an authorized activity
3. The benefit to the residents of the City.
4. The anticipated amount of the expenditure(s) (for example, hotel rates, meal costs, and transportation expenses); and
5. The dates of the expenditure(s).

Any unused advance must be returned to the City within five (5) working days of the official's return, along with an expense report and receipts documenting how the advance was used in compliance with this expense policy.

**E. Expense Report Content and Submission Deadline**

1. A Statement of Expense must be completed, signed and submitted to the City Auditor for review and forwarding to the Finance Department for payment. The Statement of Expense must document that the expense in question met the requirements of this Resolution. For example, if the meeting is with a legislator, the local agency official should explain whose meals were purchased, what issues were discussed and how those relate to the City's adopted legislative positions and priorities.
2. Officials must submit their Statement of Expense reports to the Auditor's Office within 60 days of an expense being incurred, accompanied by receipts documenting each expense. Restaurant receipts, in addition to any credit card receipts, are also part of the necessary documentation. Receipts for gratuities and tolls under \$5 are not required.
3. Inability to provide such documentation in a timely fashion may result in the expense being borne by the official.

**F. Audits of Expense Reports**

All expenses are subject to verification by the City Auditor of compliance with this policy.

**G. Reports**

At the following City Council meeting, each official shall briefly report on meetings attended at City expense. If multiple officials attended, a joint report may be made.

**H. Compliance with Laws**

City officials should keep in mind that some expenditures may be subject to reporting under the Political Reform Act and other laws. All agency expenditures are public records subject to disclosure under the Public Records Act.

**I. Violation of This Policy**

Use of public resources or falsifying expense reports in violation of this policy may result in any or all of the following:

1. loss of reimbursement privileges;
2. a demand for restitution to the City;
3. the City's reporting the expenses as income to the elected official to state and federal tax authorities;
4. civil penalties of up to \$1,000 per day and three times the value of the resources used; and
5. prosecution for misuse of public resources.

\*\*\*\*\*

The foregoing Resolution was adopted by the Berkeley City Council on September 10, 2013 by the following vote:

Ayes: Anderson, Arreguin, Capitelli, Maio, Moore, Wengraf, Worthington, Wozniak and Bates.

Noes: None.

Absent: None.

  
\_\_\_\_\_  
Tom Bates, Mayor

Attest:   
\_\_\_\_\_  
Mark Numainville, CMC, City Clerk

## **Councilmember Office Budget Relinquishment and Grant Policy**

### Introduction – Limitations on the Expenditure of Public Funds

The basic purpose of the City as an entity is to exist and function as a *municipality*. This is also reflected in the Charter, which limits the Council's powers only to those "municipal affairs adequate to a complete system of local government". (Section 38.)

Exercises of this power may not be used solely to further the interests of particular individuals, although they may incidentally benefit private interests:

The exercise of the police power is available only for the purpose of promoting the general welfare, the interests of the public as distinguished from those of individuals or persons. It cannot be used to promote private gain or advantage, except so far as the same may also promote the public interest and welfare, and it is the latter, and not the former, effect which forms the basis of the power and warrants its exercise.  
(*Binford v. Boyd* (1918) 178 Cal. 458, 461.)

The Council's basic powers circumscribe its ability to spend public funds. In other words, the Council cannot spend public funds for purposes that are beyond its authority in the first place. Thus the City may only use its funds for municipal purposes. In any given case the crucial inquiry is whether an expenditure serves such a purpose.

The determination of what constitutes a public purpose is primarily a matter for the legislature, and its discretion will not be disturbed by the courts so long as that determination has a reasonable basis.  
(*County of Alameda v. Carlson* (1971) 5 Cal.3d 730, 745-746.)

If the courts find that there is a valid public purpose, they next examine whether the government's actions are reasonably related to effectuating this purpose. (*Tip Top Foods, Inc. v. Lyng* (1972) 28 Cal.App.3d 533, 541.) Public appropriations granted to private interests will not be considered unlawful diversions of public funds when the transaction serves the public interest, merely granting an incidental benefit to the private individual. (*Cane v. City and County of San Francisco* (1978) 78 Cal.App.3d 654, 660.)

### Criteria for Grants of City Funds from Councilmember Office Budgets

Relinquishments and grants for purposes and recipients that fall within the categories listed in Table 1 may be "pre-approved" each fiscal year by Council resolution.

Table 1.

| <b>Recipient</b>                                                                                                                                | <b>Purpose</b>                                                                                                                                                                                                                                                                             |
|-------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| The City (e.g., the Berkeley Public Library, the Berkeley Animal Shelter)                                                                       | Any purpose already being undertaken, because it already serves a public purpose. This includes both grants and attendance at fundraising events in capacity as the Mayor or a Councilmember.                                                                                              |
| BUSD and other public agencies operating in Berkeley                                                                                            | Any purpose already being undertaken, because it already serves a public purpose, assuming the activity is in Berkeley. This includes both grants and attendance at fundraising events in capacity as the Mayor or a Councilmember.                                                        |
| Entities with which the City is co-sponsoring a public event in Berkeley (e.g., Earth Day, Solano Stroll).                                      | City co-sponsorship suggests but is not conclusive of public purpose; public purpose would need to be stated, and all such events should be open to the public at no cost. Alternatively, a list of ongoing events that have been determined to serve a public purpose could be developed. |
| Entities in Berkeley to which the City already contributes funds for municipal purposes (e.g., affordable housing or social service nonprofits) | To advance the same public purposes for which the entities are funded. This includes both grants and attendance at fundraising events in capacity as the Mayor or a Councilmember.                                                                                                         |

Proposed relinquishments and grants that do not meet the criteria for pre-approval, but that meet an appropriate municipal purpose, may be approved by resolution with a majority vote of the City Council.

RESOLUTION NO. 63,413-N.S.

ESTABLISHING TRAVEL AND TRAINING REIMBURSEMENT POLICY FOR  
BOARD AND COMMISSION MEMBERS

WHEREAS, AB 1234, a new state law, requires that all cities adopt an expense reimbursement policy before a legislative body member may receive reimbursement for necessary expenses of office; and

WHEREAS, the Rent Stabilization Board and Board of Library Trustees occasionally authorize their Board members to attend specific training seminars and meetings which are designed to facilitate the Board members' performance of their duties; and

WHEREAS, the City Manager will occasionally authorize the use of City funds for a board or commission member from other boards or commissions to attend training programs or conferences designed to improve that official's skill and information level; and

WHEREAS, the Council has adopted an Expenditure and Reimbursement Policy for the Council and Mayor that sets forth those travel and training expenses for which Council will be reimbursed.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Berkeley that the following policy is adopted for reimbursement of board and commission members for travel and training expenses.

**TRAVEL AND TRAINING REIMBURSEMENT FOR BOARDS/COMMISSIONS**

**A. Authorized Activities.**

Travel, meals and lodging incurred in connection with attending educational seminars designed to improve officials' skill and information levels constitute authorized expenses, as long as the other requirements of this Resolution are fulfilled. For members of most of the City's boards and commission, other than the Board of Library Trustees and Rent Stabilization Board, such activities will occur only on rare occasions when approved by the City Manager and determined to be within the City's budget. The member of the body attending the educational event shall provide a brief report of the activity to the legislative body at a public meeting subsequent to the seminar. The Rent Stabilization Board may also receive travel meals and lodging incurred in connection with communicating with representatives of local, regional, state and national government on Board policy positions to the extent permitted by the Board.

**B. Unauthorized Expenses**

The following personal expenditures incurred by City officials shall not be reimbursed:

1. The personal portion of any trip, such as where the official is on his/her own vacation activities;
2. Political contributions or attendance at political or charitable events;

3. Family expenses, including partner's expenses when accompanying official on agency-related business, as well as children or pet-related expenses;
4. Entertainment expenses, including theater, movies (either in-room or at the theater), sporting events (including gym, massage and/or golf related expenses), or other recreational and cultural events;
5. Alcoholic beverages;
6. Non-mileage personal automobile expenses, including repairs, traffic citations, insurance or gasoline; and
7. Personal losses incurred while on City business. Any questions regarding the propriety of a particular type of expense should be resolved by the City Council before the expense is incurred.

**C. Particular Types of Authorized Expenditures Defined**

To conserve City resources and keep expenses within community standards for public officials, expenditures should adhere to the following guidelines. In the event that expenses are incurred which exceed these guidelines, the cost borne or reimbursed by the City will be limited to the costs that fall within the guidelines.

1. **Registration.** Registration fee charged for any authorized convention, conference, seminar or meeting is reimbursable.
2. **Transportation.** The most economical mode and class of transportation reasonably consistent with scheduling needs and cargo space requirements must be used, using the most direct and time-efficient route. Charges for rental-vehicles may be reimbursed under this provision if more than one City official is attending an out of town conference, and it is determined that sharing a rental vehicle is more economical than other forms of transportation. In making such determination, the cost of the rental vehicle, parking and gasoline will be compared to the combined cost of such other forms of transportation. Government and group rates must be used when available.
3. **Airfare.** Airfares that are equal to or less than those available through the Enhanced Local Government Airfare Program offered through the League of California Cities, the California State Association of Counties and the State of California are presumed to be the most economical and reasonable for purposes of reimbursement under this policy.
4. **Automobile.** Automobile mileage is reimbursed at Internal Revenue Service rates presently in effect. These rates are designed to compensate the driver for gasoline, insurance, maintenance, and other expenses associated with operating the vehicle. This amount does not include bridge and road tolls, which are also reimbursable. The Internal Revenue Service rates will not be paid for rental vehicles; only receipted fuel expenses will be reimbursed.
5. **Car Rental.** Rental rates that are equal or less than those available through the State of California's website (<http://www.catravelmart.com/default.htm>) shall be considered the most economical and reasonable for purposes of reimbursement under this policy.


6. **Taxis/Shuttles.** Taxis or shuttles fares may be reimbursed, including a 15 percent gratuity per fare, when the cost of such fares is equal or less than the cost of car rentals, gasoline and parking combined, or when such transportation is necessary for time-efficiency.
7. **Lodging.** Lodging expenses will be reimbursed or paid for when travel on official City business which reasonably requires an overnight stay. If such lodging is in connection with a conference, lodging expenses must not exceed the group rate published by the conference sponsor for the meeting in question. Travelers must request government rates, when available. In the event that government rates are not available at a given time or in a given area, lodging rates that do not exceed the IRS per diem rates for a given area are presumed reasonable and hence reimbursable.
8. **Meals.** Meal expenses and associated gratuities should be moderate, taking into account community standards and the prevailing restaurant costs of the area. A helpful source of guidance is Internal Revenue Service per diem rates for meals and incidental expenses, which include adjustments for higher costs locations (*see* Publication 1542 at [www.irs.gov](http://www.irs.gov) or [www.policyworks.gov/perdiem](http://www.policyworks.gov/perdiem)).
9. **Telephone/Fax/Cellular.** Officials will be reimbursed for actual telephone and fax expenses incurred on City business. Telephone bills should identify which calls were made on City business. For calls made on an official's personal cell phone, the official may obtain reimbursement for business calls based on the following formula: minutes used on public business divided by the total minutes allowed under a monthly plan, plus long-distances charges for those calls.
10. **Airport Parking.** Airport parking must be used for travel exceeding 24-hours.
11. **Other Travel Related Expenses.** Baggage handling fees of up to \$1 per bag and gratuities of up to 15 percent will be reimbursed. Expenses for which City officials receive reimbursement from another agency are not reimbursable.

The foregoing Resolution was adopted by the Berkeley City Council on July 25, 2006 by the following vote:

Ayes: Councilmembers Anderson, Capitelli, Maio, Moore, Olds, Spring, Worthington, Wozniak and Mayor Bates.

Noes: None.

Absent: None.

Attest:   
Sherry M. Kelly, City Clerk

  
\_\_\_\_\_  
Tom Bates, Mayor



**CITY OF BERKELEY  
ADMINISTRATIVE REGULATIONS**

**A.R. NUMBER: 3.14**  
**ORIGINAL DATE: 03/01/96**  
**POSTING DATE: 08/30/07**  
**PAGE 1 of 7 PAGES**

**SUBJECT: FN-024 Voucher Processing**

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**PURPOSE**

This AR establishes criteria and procedures for payments using an FN-024.

**POLICY**

It is the policy of the City Manager that an FN-024 Payment Vouchers (see Groupware – Finance) is limited to making payments for the following purposes.

- A. City Employees, Mayor and Councilmembers, Commissioners<sup>1</sup>, or Library Trustees:
1. Employee travel advances and reimbursements (see AR 3.9 and forms in Groupware – Finance)
  2. Employee reimbursements for authorized use of a private vehicle (see AR 7.2 &/or AR 3.19 in process and form Auto Record for Mileage Reimbursement published in Groupware – Finance)
  3. Mayor and Council reimbursement for authorized expenses<sup>2</sup> (see Resolution 63,412-NS)
  4. Commissioner and Library Trustee<sup>3</sup> payments<sup>Note</sup> (see AR 3.2 for eligibility criteria; and Resolution 63,413-NS)
- B. Refunds
- C. Other Designated Payments:
1. State and Federal taxes
  2. Loan repayment
  3. Various payments associated with payroll and employee benefits
  4. Certain 1-time miscellaneous items under \$5,000
  5. Police Department Special Enforcement Unit Cash Fund (Special Investigative Bureau/SIB)\*

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<sup>1</sup> “Commissioner” includes Rent Stabilization Board Commissioners for reimbursements or other approved payments.

<sup>2</sup> Requires review by the City Auditor; SIB reimbursement payment also requires approval by City Auditor.

<sup>3</sup> These payments to Commissioners (not including Rent Board) and Library Trustees, are for “... authorized payment in lieu of expenses to members of all Council-appointed boards, commissions, committees, task forces and joint subcommittees who meet certain criteria ...” See AR 3.2 for complete details.

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All other goods and services, including subscriptions and membership dues, must be paid by Purchase Order (see AR 3.4 and the online Purchasing Manual). The Director of Finance must approve any exceptions before purchases are made on behalf of the City.

See AR 3.3, Petty Cash Accounts and forms in Groupware – Finance, for reimbursement for purchases \$50 and under.

### **PROCEDURE**

These steps take you through how to make correct entries and complete an FN-024 Payment Voucher; note that WORDS PRINTED LIKE THIS designate a field for your entries on the Voucher form.

- FN-024 Payments
- Payments to City Employees, Elected Officials, or Qualifying Commissioners
- Payments for Refunds
- Other Designated Payments
- Additional Instructions for all FN-024 Payment Vouchers
- Check Printing & Disbursement
- Related items on Groupware – Finance

### **FN-024 Payments**

Use FUNDS\$ GMBA Master Inquiry [FUNDS\$ > 7 > 1 > 2] to confirm all vendor information, including the designated Name on Checks field displayed at the bottom of the FUNDS\$ screen.

1. For an existing vendor/payee: if there are any differences between the data in GMBA Vendor Master file and the remittance information: please notify Finance – General Services: go to Groupware > Finance > Procurement Materials & Forms: Vendor Information Application, and use this form to update/correct the vendor information, and submit it to General Services.
2. For any new vendor or payee: an original and signed Vendor Information Application and/or W-9 (as applicable for vendor/payment) must be on file with Finance – General Services. In the interim, fax a copy to General Services; then attach a copy of completed Vendor Application and/or W-9 to the FN-024; the signed original/s must be mailed within 3 days.
  - a. Vendor Information Application: go to Groupware > Finance > Procurement Materials & Forms: Vendor Information Application, and have the vendor/payee complete this form.
  - b. Tax Payer ID & Certification Form W-9, or go to <http://www.irs.gov/pub/irs-pdf/fw9.pdf>.

### **Payments to City Employees, Elected Officials, Qualifying Commissioners, or Library Trustees**

#### **A. Vendor Information**

1. VENDOR NAME: enter the name of individual, followed by "EMPLOYEE," "MAYOR," "COUNCIL," "COMMISSIONER," "RENT BOARD" or "LIBRARY TRUSTEE," as applicable, and highlight the individual's designation.

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2. VENDOR NO.: enter the number for the individual, as found in FUNDS\$ GMBA Vendor Master Inquiry.
  3. ADDRESS: enter the department and division of payee or Commissioner's mailing address.
  4. Payments to employees, Mayor and Council must be picked up from AP: complete the line for Pick Up Check at AP as instructed under the section Check Printing & Disbursement, below.  
Payments to qualifying Commissioners<sup>4</sup> or Library trustees will be mailed. If payment will be picked up rather than mailed out, complete the line for Pick Up Check at AP as instructed under the section Check Printing & Disbursement, below.

NOTE: FN-024s for Mayor/Council official reimbursements, qualifying Commissioner stipends, and Library Trustees must be reviewed by the City Auditor prior to submitting to Accounts Payable for payment processing. SIB payments must be reviewed and approved by the City Auditor.

- B. Description & Purpose (FUNDS\$ limits this to approximately 25 characters per description field)
  1. DESCRIPTION 1: enter conference name, period/s of mileage reimbursement, or Board or Commission meeting date/s.
  2. DESCRIPTION 2: enter other applicable information, i.e., the reason a request for payment is being made on an FN-024, rather than a Purchase Order.
- C. Invoice Information
  1. INVOICE #: enter conference invoice # or date/s. (FUNDS\$ limit of approximately 15 characters)
  2. INVOICE DATE: for advances or reimbursements to an employee, Mayor, Councilmember or Commissioner\*, enter the date of the conference or the last date of the reimbursement period.

### Payments for Refunds

- A. Vendor Information
  1. VENDOR NAME: enter payee name followed by "MISC REFUND" and **highlight** it.
  2. VENDOR NO.: enter the assigned miscellaneous vendor number.
  3. ADDRESS: enter the payee mailing address.
  4. Requests for refunds that include deductions for fees should clearly state the original amount paid to the City, the reason for the deduction, and the balance for the refund owed to payee.
  5. Original receipts must be submitted for a refund. If an original receipt is not available, a completed and signed Customer Request for Refund Without Receipt must be attached.
- B. Description & Purpose (FUNDS\$ limits this to approximately 25 characters per description field)
  1. DESCRIPTION 1: enter nature of purchase or service.

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<sup>4</sup> Including members of the Rent Stabilization Board for reimbursements or other approved payments.

2. DESCRIPTION 2: enter other applicable information, i.e., the reason a request for refund is being made.

C. Invoice Information

1. INVOICE #: for refunds, use the receipt number. (FUND\$ limit of approximately 15 characters)
2. INVOICE Date: for refunds, enter the original payment date from the original receipt.

**Other Designated Payments** (see list under Policy on 1<sup>st</sup> page)

A. Vendor Information

**FIRST** – For all FN-024 Payments: follow instructions for the initial procedure, above. Then:

1. VENDOR NAME: enter the payee name as it appears in FUND\$ GMBA Master Inquiry.
2. VENDOR NO.: enter the vendor # as it appears in FUND\$ GMBA Master Inquiry.
3. ADDRESS: when correct information is confirmed or corrected in GMBA, this can be blank.

B. Description & Purpose (FUND\$ limits these to approximately 25 characters per description field)

1. DESCRIPTION 1: enter nature of purchase or service.
2. DESCRIPTION 2: enter other applicable information, i.e., the reason a request for payment is being made on an FN-024, rather than a Purchase Order.

C. Invoice Information

1. INVOICE #: enter exactly as it appears on the vendor invoice, with dashes, hyphens, etc; if there is no invoice number, use the statement date as the invoice number (FUND\$ has a limit of approximately 15 characters).
2. INVOICE Date: enter the invoice or statement date.

**Additional Instructions for all FN-024 Payment Vouchers**

A. Account Codes & Project Code

1. Prior to submitting an FN-024, departments must confirm the account codes and project code used are active, correct for the expenditure, and have sufficient, unencumbered balances.
2. If needed, departments must process any budget adjustments prior to submitting the FN-024.
3. Accounts Payable will return FN-024s to departments for inactive budget or project codes, and/or improper budget codes, or insufficient funds.

B. Authorized Signatures

Each department must complete an Authorized Signatures Card with the designated staff authorized to approve invoices and FN-024s (see AR 3.12 and the Authorized Signatures Card form on Groupware – Finance). When there are changes in personnel authorized to approve an FN-024, the Authorized Signatures Card must be updated with Accounts Payable. 1.

PREPARED BY: signature of the person responsible for completing the FN-024.

- 
2. **AUTHORIZED DEPT SIGNATURE:** must be signed by authorized personnel, as reflected by the Authorized Signatures Card currently on file with Accounts Payable. FN-024s signed by unauthorized personnel will be returned.
- C. Limitations & Justification for 1-time Miscellaneous Items
1. A 1-time request for payment made on an FN-024, which would otherwise be made using a Purchase Order, means 1-time ever – not once a year or once-in-awhile. 1-time requests are only allowed for payments less than \$5,000.
  2. If a request for payment is being made on an FN-024 that would otherwise be made using a Purchase Order, there must be a justification provided on, or attached to, the FN-024. The Finance Director must approve the justification for use of an FN-024 prior to it being submitted for payment.
- D. Compiling the FN-024 Package: Form & Attachments
1. Place the FN-024 on top, with all required documentation stapled to the upper left-hand corner.
  2. If there is documentation required to be included with payment to the vendor, you must provide copies of this documentation, along with an envelope or mailing label addressed to the vendor. This is in addition to documentation required for Accounts Payable. Attach the documentation (duplicate copies and/or mailing stubs) to the upper right-hand corner.
  3. For payment of two or more items on a single FN-024, list each item separately, with its corresponding amount and account codes, on the FN-024. Attach an adding machine tape that totals the original items, and balances to the total on the FN-024.
  4. Employee reimbursements for authorized use of a private vehicle require an attached corresponding Auto Record for Mileage Reimbursement, available in Groupware. In addition, attach an adding machine tape totaling and balancing to the FN-024 for the period submitted.

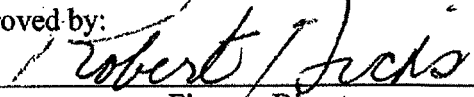

### **Check Printing & Disbursement**

1. Checks are usually printed weekly on Thursdays. FN-024s received in Accounts Payable by 5:00pm Monday will be processed for printing that week. Changes to this schedule will be emailed to departmental AP processing personnel and/or posted on the City's intranet.
2. Vendor checks will be mailed; see Compiling the FN-024 Package: Form & Attachments for specific requirements. If payment will be picked up rather than mailed, see instructions below.
3. Employee, Mayor, and Council checks will be available to pick up at Accounts Payable after 4:00pm on Thursday.
4. Pick Up Check at Accounts Payable: If it's been indicated on the FN-024 that a designated person will pick up the check, a City employee may sign for and pick up vendor checks. However, vendors may not pick up checks themselves from Finance – Accounts Payable. If payment will be picked up by an employee, rather than mailed out, complete the line in the upper right hand side of the FN-024 for Pick Up Check at AP: enter and **highlight** the name of authorized person the payment may be released to. This employee will be notified by email when the check is available to be picked up from Finance – Accounts Payable.

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**EXCEPTIONS**

Any exceptions to this AR must be approved in writing by the Director of Finance.

|                                                      |                                                                                                                          |
|------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------|
| <b>RESPONSIBLE DEPARTMENT:</b><br>Finance Department | Approved by:<br><br>Finance Director |
| <b>TO BE REVIEWED/REVISED:</b><br>Every year         | <br>City Manager                     |

**The following items are related to this AR, and can be found on Groupware – Finance:**

1. FN-024 Payment Voucher – Excel file
2. FN-024 Payment Voucher – PDF file
3. AR 3.12 Authorized Signatures for Invoices and FN-024 Payment Vouchers
4. Authorized Signatures Card
5. Vendor Information Application
6. Tax Payer ID & Certification Form W-9
7. Customer Request for Refund Without Receipt
8. Attendance & Travel Expense Forms – web page with links to individual forms



Fair Campaign Practices Commission

CONSENT CALENDAR

July 28, 2020

To: Honorable Mayor and Members of the City Council  
From: Fair Campaign Practices Commission  
Submitted by: Dean Metzger, Chairperson, Fair Campaign Practices Commission  
Subject: Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12

RECOMMENDATION

Conduct a public hearing and upon conclusion, adopt first reading of an ordinance amending the Berkeley Election Reform Act, Berkeley Municipal Code Chapter 2.12, to prohibit Officeholder Accounts (See [Section 18531.62. Elected State Officeholder Bank Accounts, Regulations of the Fair Political Practices Commission](#)).

POLICY COMMITTEE RECOMMENDATION

On June 29, 2020, the Agenda and Rules Committee adopted the following action: M/S/C (Hahn/Wengraf) to make a Positive Recommendation to the City Council that the item be referred to the Agenda & Rules Committee to be considered with other related referrals from the Fair Campaign Practices Commission. The item will be calendared for the Consent Calendar on the July 28, 2020 agenda. Vote: All Ayes.

SUMMARY

Contributions to and expenditures from Officeholder Accounts provide an unfair advantage to incumbents. They also increase the reliance on private campaign contributions and risk increasing the perception of corruption. Amending the Berkeley Election Reform Act to prohibit Officeholder Accounts will help to level the playing field in municipal elections, which was also a goal of the Fair Elections Act of 2016.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The proposed amendments to the Berkeley Election Reform Act (BERA) were adopted by the Fair Campaign Practices Commission (FCPC) at its regular meeting of November 21, 2019.

**Action:** M/S/C (Smith/Saver) to adopt the proposed amendments to BERA related to Officeholder Accounts.

**Vote:** Ayes: Metzger, Ching, Saver, Blome, McLean, Tsang, Smith; Noes: none; Abstain: none; Absent: O'Donnell (excused).



Amendments to the Berkeley Election Reform Act  
to prohibit Officeholder Accounts

CONSENT CALENDAR  
July 28, 2020

Pursuant to Berkeley Municipal Code Section 2.12.051, BERA may be amended by the “double green light” process. This process requires that the FCPC adopt the amendments by a two-thirds vote, and the City Council hold a public hearing and adopt the amendments by a two-thirds vote.

### BACKGROUND

The Fair Campaign Practices Commission has supported creating the circumstances in which the incumbent and challengers during an election play on as level a playing field as possible and reducing the influence of private campaign contributions. For instance, the Berkeley Fair Elections Act of 2016, which was passed by voters and recommended to Council by the Commission, included the following express purposes:

- Eliminate the danger of actual corruption of Berkeley officials caused by the private financing of campaigns.
- Help reduce the influence of private campaign contributions on Berkeley government.
- Reduce the impact of wealth as a determinant of whether a person becomes a candidate.

(Section 2.12.490(B)-(D).)

A recent inquiry to the Commission Secretary regarding the regulation of Officeholder Accounts resulted in a request from a Commissioner to have discussion of these accounts placed on the May 16, 2019 agenda for possible action. The following motion was made and passed at that meeting:

Motion to request staff work with Commissioner Smith to bring to a future meeting background information and a proposal to eliminate officeholder accounts (M/S/C: O'Donnell/Blome; Ayes: Blome, Ching, McLean, Metzger, O'Donnell, Saver, Smith, Tsui; Noes: None; Abstain: None; Absent: Harper (excused)).

### **Definition of an Officeholder Account**

Under state law, an “officeholder account” refers to the funds held in a single bank account at a financial institution in the State of California separate from any other bank account held by the officeholder and that are used for “paying expenses associated with holding public office.” Officeholder Account funds cannot be used to pay “campaign expenses.” This definition is drawn from state law applicable to statewide elected officials: Government Code section 85316 (Attachment 2), and the accompanying regulation by the Fair Political Practices Commission (FPPC) codified at Title 2, Division 6, of the California Code of Regulations, [Section 18531.62](#) (Attachment 3).

Contributions to or expenditures from an Officeholder Account are not subject to BERA’s reporting requirements. (The FPPC still requires the reporting of activity relating to Officeholder Accounts, which is available to view on Berkeley’s [Public Access Portal](#).) If, however, a complaint is filed that an Officeholder Account is used for

campaign contributions or to pay “campaign expenses,” BERA can be used to respond to the complaint. The legal arguments for these statements are contained in a memorandum signed by City Attorney Manuela Albuquerque to Aide to Mayor Shirley Dean, Barbara Gilbert, dated December 28, 1999 and a December 9, 1991 memorandum by Secretary and Staff Counsel to the FCPC, Sarah Reynoso, that is attached to the December 28, 1999 memo. (Attachment 4.) Because the BERA provisions relied on in these memoranda have not been amended, and because no other BERA provisions have been added to regulate officeholder accounts, the memoranda’s conclusions remain valid and are still controlling guidance.

### **Contributions to Officeholder Accounts**

Funds raised for Officeholder Accounts in Berkeley are not subject to any limitations, either from the FPPC or BERA. Neither is there a limit on the total amount the Officeholder Account fund may receive in contributions per year. Contributions to an elected official’s Officeholder Account may put that contributor in a more favorable light with the elected official than might otherwise be the case.

### **Expenditures from Officeholder Accounts**

Except for the restriction that Officeholder Account funds cannot be used for “campaign expenses,” BERA does not restrict how funds from Officeholder Accounts can be used.

There are a number of permissible expenditures from Officeholder Accounts that could put an elected official in a favorable light with voters that are not available to a challenger for that office. A donation to a nonprofit organization, although technically not a “campaign expense,” would be seen favorably by those receiving the funds as well as individuals favorably disposed to the nonprofit organization receiving the funds. An individual running against this incumbent would have to draw on their own resources to make contributions to nonprofit organizations.

As long as political campaigns are not included, newsletters mailed to constituents related to events, information, or an officeholder’s position on matters before the Council are a permissible Officeholder Account expenditure. This keeps the incumbent’s name in front of the voter in a way unavailable to a challenger unless they pay for a newsletter and its distribution from their own resources.

Expenditures from Officeholder Account funds for flowers and other expressions of condolences, congratulations, or appreciation, while technically not “campaign expenses,” also increase the probability that the recipient will be favorably predisposed toward the elected official as a candidate for reelection or election to another office. Again, a challenger would have to draw on their own resources to express condolences, congratulations, or appreciation to their potential supporters.

Further, officeholder accounts can be used to pay for a broad range of office expenses, such as meals, travel, parking tickets, or contributions to other candidates or political parties.<sup>1</sup> Eliminating officeholder accounts would reduce reliance on and the influence of private contributions for these expenditures.

### **Recommendation**

To make elections more equitable between challengers and incumbent and for the reasons given above, the Fair Campaign Practices Commission recommends prohibiting Officeholder Accounts.

Berkeley will not be the first to prohibit Officeholder Accounts. The San Jose Municipal Code was amended to prohibit officeholder accounts in January 2008. ([Chapter 12.06 – ELECTIONS, San Jose, CA Code of Ordinances, p. 10](#))

#### **Part 8 - OFFICEHOLDER ACCOUNTS**

##### **12.06.810 - Officeholder account prohibited.**

No city officeholder, or any person or committee on behalf of a city officeholder may establish an officeholder account or an account established under the Political Reform Act, California Government Code Section 8100 et seq. as amended, for the solicitation or expenditure of officeholder funds. Nothing in this section shall prohibit an officeholder from spending personal funds on official or related business activities.

The following additions to BERA are proposed:

#### **2.12.157 Officeholder Account**

“Officeholder Account” means any bank account maintained by an elected officer or by any person or committee on behalf of an elected officer, and whose funds are used for expenses associated with holding office and not for direct campaign purposes.

#### **2.12.441 Officeholder account prohibited**

- A. No elected officer, or any person or committee on behalf of an elected officer, may establish an officeholder account.
- B. No elected officer, or any person or committee on behalf of an elected officer, may use contributions, as defined in 2.12.100, for expenses associated with holding office.

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<sup>1</sup> Under state law applicable to state elected officials, officeholders may use campaign contributions for “expenses that are associated with holding office.” (Govt. Code, § 89510.) To qualify, expenditures must be “reasonably related to a legislative or governmental purpose.” (*Id.*, § 89512.) “Expenditures which confer a substantial personal benefit shall be directly related to a political, legislative, or governmental purpose.” (*Ibid.*)

Amendments to the Berkeley Election Reform Act  
to prohibit Officeholder Accounts

PUBLIC HEARING  
January 21, 2020

- C. Anyone holding an active Officeholder Account on the date this change to BERA is adopted on a second reading by the City Council has one year from that date to terminate their Officeholder Account, in accordance with FPCC guidelines.

ENVIRONMENTAL SUSTAINABILITY

There are no identified environmental effects related to the recommendation in this report.

RATIONALE FOR RECOMMENDATION

This proposed change to BERA will help to level the playing field between challengers and the incumbent running for elective office.

ALTERNATIVE ACTIONS CONSIDERED

A Subcommittee was formed to consider the options of (1) amending the Berkeley Elections Reform Act, BMC Chapter 2.12, to prohibit Officeholder Accounts, (2) amending BERA to mitigate possible advantages incumbents with an Officeholder Accounts have over challengers, or (3) doing nothing with regard to Officeholder Accounts. The four members of the Subcommittee recommended unanimously to the full Commission to amend the Berkeley Elections Reform Act, BMC Chapter 2.12, to prohibit Officeholder Accounts.

CITY MANAGER

The City Manager takes no position on the content and recommendations of this report.

CONTACT PERSON

Dean Metzger, Chair, Fair Campaign Practices Commission. 981-6998

Attachments:

- 1: Proposed Ordinance
- 2: Government Code section 85316
- 3: Section 18531.62 (Elected State Officeholder Bank Accounts), Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations
- 4: Memorandum signed by City Attorney Manuela Albuquerque to Aide to Mayor Shirley Dean, Barbara Gilbert (including attached memorandum signed by Secretary and Staff Counsel to the FCPC, Sarah Reynoso, to the FCPC)

ORDINANCE NO. ##,###-N.S.

OFFICEHOLDER ACCOUNT PROHIBITED; AMENDING BERKELEY MUNICIPAL CODE  
CHAPTER 2.12

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code section 2.12.157 is added to read as follows:

**BMC 2.12.157 Officeholder account**

“Officeholder Account” means any bank account maintained by an elected officer or by any person or committee on behalf of an elected officer, and whose funds are used for expenses associated with holding office and not for direct campaign purposes.

Section 2. That Berkeley Municipal Code section 2.12.441 is added to read as follows:

**BMC 2.12.441 Officeholder account prohibited**

- A. No elected officer, or any person or committee on behalf of an elected officer, may establish an officeholder account.
- B. No elected officer, or any person or committee on behalf of an elected officer, may use contributions, as defined in 2.12.100, for expenses associated with holding office.
- C. This provision does not affect a candidate’s ability to establish a legal defense fund or the requirements for such a fund, as set forth in the Political Reform Act or by regulation.
- D. Any active Officeholder Account on the date this change to BERA is adopted on a second reading by the City Council has one year from that date to terminate their Officeholder Account.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation


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## GOVERNMENT CODE - GOV

**TITLE 9. POLITICAL REFORM [81000 - 91014]** ( Title 9 added June 4, 1974, by initiative Proposition 9. )

**CHAPTER 5. Limitations on Contributions [85100 - 85802]** ( Chapter 5 added June 7, 1988, by initiative Proposition 73. )

### ARTICLE 3. Contribution Limitations [85300 - 85321]

( Article 3 added June 7, 1988, by initiative Proposition 73. )

**85316.** (a) Except as provided in subdivision (b), a contribution for an election may be accepted by a candidate for elective state office after the date of the election only to the extent that the contribution does not exceed net debts outstanding from the election, and the contribution does not otherwise exceed the applicable contribution limit for that election.

(b) Notwithstanding subdivision (a), an elected state officer may accept contributions after the date of the election for the purpose of paying expenses associated with holding the office provided that the contributions are not expended for any contribution to any state or local committee. Contributions received pursuant to this subdivision shall be deposited into a bank account established solely for the purposes specified in this subdivision.

(1) No person shall make, and no elected state officer shall receive from a person, a contribution pursuant to this subdivision totaling more than the following amounts per calendar year:

(A) Three thousand dollars (\$3,000) in the case of an elected state officer of the Assembly or Senate.

(B) Five thousand dollars (\$5,000) in the case of a statewide elected state officer other than the Governor.

(C) Twenty thousand dollars (\$20,000) in the case of the Governor.

(2) No elected state officer shall receive contributions pursuant to paragraph (1) that, in the aggregate, total more than the following amounts per calendar year:

(A) Fifty thousand dollars (\$50,000) in the case of an elected state officer of the Assembly or Senate.

(B) One hundred thousand dollars (\$100,000) in the case of a statewide elected state officer other than the Governor.

(C) Two hundred thousand dollars (\$200,000) in the case of the Governor.

(3) Any contribution received pursuant to this subdivision shall be deemed to be a contribution to that candidate for election to any state office that he or she may seek during the term of office to which he or she is currently elected, including, but not limited to, reelection to the office he or she currently holds, and shall be subject to any applicable contribution limit provided in this title. If a contribution received pursuant to this subdivision exceeds the allowable contribution limit for the office sought, the candidate shall return the amount exceeding the limit to the contributor on a basis to be determined by the Commission. None of the expenditures made by elected state officers pursuant to this subdivision shall be subject to the voluntary expenditure limitations in Section 85400.

(4) The commission shall adjust the calendar year contribution limitations and aggregate contribution limitations set forth in this subdivision in January of every odd-numbered year to reflect any increase or decrease in the Consumer Price Index. Those adjustments shall be rounded to the nearest one hundred dollars (\$100).

(Amended by Stats. 2007, Ch. 130, Sec. 149. Effective January 1, 2008. Note: This section was added by Stats. 2000, Ch. 102, and approved in Prop. 34 on Nov. 7, 2000.)



(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

**§ 18531.62. Elected State Officeholder Bank Accounts.**

(a) Application and Definitions. For purposes of Section 85316(b) and this regulation, the following definitions apply:

(1) "Officeholder" means an elected state officer.

(2) "Officeholder controlled committee" means a committee formed pursuant to subdivision (c) of this regulation.

(3) "Officeholder account" means the bank account established at a financial institution located in the State of California pursuant to Section 85316(b).

(4) "Officeholder funds" means money in the officeholder account.

(b) Establishing the Officeholder Account: For purposes of Section 85316(b), an officeholder shall maintain officeholder funds in a single bank account separate from any other bank account held by the officeholder.

(c) Establishing the Officeholder Controlled Committee, Reporting and Recordkeeping:

(1) Formation: The officeholder shall establish a controlled committee by filing a statement of organization pursuant to Section 84101 if the officeholder receives \$2,000 or more in officeholder contributions in a calendar year.

(2) Committee Name: The controlled committee name shall include the officeholder's last name, the office held, the year the officeholder was elected to the current term of office, and the words "Officeholder Account." The statement of organization shall include the name, account number, and address of the financial institution where the committee established the officeholder account.

(3) Filing Requirements: The controlled committee shall file campaign statements and reports pursuant to Chapters 4 and 5, except Sections 85200 and 85201, of Title 9 of the Government Code at the same times and in the same places as it otherwise would be required to do for any other controlled committee formed by the officeholder for election to state office.

(4) Required Recordkeeping and Audits. The officeholder and treasurer shall be subject to recordkeeping requirements under Section 84104. The officeholder account and officeholder controlled committee shall be subject to audits under Chapter 10 of Title 9 of the Government Code. Any audit of the officeholder, or any of his or her controlled committees, under Section 90001 shall include all officeholder accounts and officeholder controlled committees maintained by the officeholder during the audit period as described in Regulation 18996(a)(1).

(d) Prohibitions:

(1) Officeholder funds may not be contributed or transferred to another state or local committee, including any other controlled committee of the officeholder, except as permitted in subdivisions (g) (2) and (g)(3).

(2) Officeholders may not use officeholder funds to pay "campaign expenses" as defined in Regulation 18525(a).

(3) The officeholder may not transfer or contribute funds from any other committee he or she controls to the officeholder account, except as permitted in subdivision (g)(2) and (g)(3).

(e) Contributions to the Officeholder Account:

(1)(A) Required Notices: In addition to the requirements of Regulation 18523.1, a written solicitation for contributions to the officeholder account shall include the following: "For purposes of the Political Reform Act's contribution limits, a contribution to an officeholder-



account is also considered to be a contribution to all campaign committees for future elective state office the officeholder seeks during his or her current term of office.

(B) In addition to the requirements of subparagraph (A) above, an officeholder who files a statement of intention to be a candidate for any elective state office during the officeholder's term of office shall provide notice of this filing to every person that has made a contribution to his or her officeholder account. The notice shall contain the language in subparagraph (A) and be transmitted or mailed within 10 days of filing the statement of intention to be a candidate.

(2) Cumulation: A contribution to the officeholder account shall also be deemed a contribution to the officeholder's controlled committee for election to elective state office for the purposes of Section 85316(b)(3) only under all of the following circumstances:

(A) The contributor makes the contribution between the day the election was held for the term of office for which the officeholder account was established and the end of that term of office;

(B) The officeholder maintains the controlled committee, established for a future term of elective state office, at any time during the period covered in subparagraph (A).

(3) Cumulation and Primary and General Elections: A person's contributions to the officeholder account, when combined with contributions from the same person for a primary and general election to the elective state office may not exceed the contribution limits applicable to the primary and general election.

(4) Multiple Officeholder Accounts: When an officeholder maintains more than one officeholder account in the same calendar year, he or she may not receive the following contributions to any of those accounts during that calendar year:

(A) Contributions from a single contributor that, when cumulated for all the accounts, exceed the maximum amount the contributor could give to the officeholder account having the highest per person contribution limit under Section 85316(b)(1).

(B) Contributions from all contributors that, when cumulated for all the accounts, exceed the maximum amount in total contributions the officeholder could receive in the officeholder account having the highest aggregate contribution limit under Section 85316(b)(2).

(f) Contributions Over the Limits:

(1) An officeholder shall return to the contributor the portion of any contribution to his or her officeholder account that exceeds the limits of Section 85301, 85302 (after cumulation) or 85316 (either alone or after cumulation) by the earlier of 14 days of receipt or 14 days of the date the officeholder files a statement of intention to be a candidate for elective state office pursuant to Section 85200.

(2) A contributor to the officeholder account does not violate the contribution limits applying to the officeholder's election to a future elective state office as otherwise provided under Section 85316(b)(3) if, when he or she makes the contribution, the officeholder has not filed a statement of organization to establish a controlled committee for election to a future elective state office.

(g) Terminating Officeholder Accounts and Committees.

(1) The officeholder may not accept contributions after the officeholder's term of office ends or the date he or she leaves that office, whichever is earlier.

(2) The officeholder may redesignate the officeholder account as an officeholder controlled committee for a future term of the same office by amending the statement of



organization for the committee to reflect the redesignation for the future term of office prior to the date the officer's term of office ends.

(3) An officeholder may redesignate officeholder funds in the redesignated officeholder account as officeholder funds for the new term of office, subject to the limitations in subdivision (e)(4).

(4) Once the officeholder's term of office ends or he or she leaves that office, whichever is earlier, the officeholder may only use his or her officeholder funds for the following purposes:

- (A) Paying outstanding officeholder expenses.
- (B) Repaying contributions to contributors to the officeholder account.
- (C) Making a donation to a bona fide charitable, educational, civic, religious, or similar tax-exempt, nonprofit organization, if no substantial part of the proceeds will have a material financial effect on the officeholder, a member of his or her immediate family, or his or her committee treasurer.

(D) Paying for professional services reasonably required by the officeholder controlled committee to assist in the performance of its administrative functions.

(5) The officeholder shall terminate the officeholder controlled committee within 90 days of the date the officer's term of office ends or he or she leaves that office, whichever is earlier. The Executive Director may for good cause extend the termination date or permit the candidate to reopen the account.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 84104, 85316 and 90000-90007, Government Code.

**HISTORY**

1. New section filed 7-3-2007; operative 8-2-2007. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2007, No. 27). For prior history, see Register 2007, No. 26.
2. Change without regulatory effect amending section filed 3-22-2016; operative 4-21-2016 pursuant to 2 CCR 18312(e). Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2016, No. 13).



Office of the  
City Attorney

**DATE:** December 28, 1999

**TO:** BARBARA GILBERT,  
Aide to Mayor Shirley Dean

**FROM:** MANUELA ALBUQUERQUE, City Attorney *MA*  
By: CAMILLE COUREY, Deputy City Attorney

**SUBJECT:** APPLICATION OF BERKELEY ELECTION REFORM ACT TO OFFICEHOLDER ACCOUNTS

ISSUE:

Does the Berkeley Election Reform Act (BERA) govern officeholder accounts?

CONCLUSION:

No. The BERA does not govern true officeholder accounts per se. However, the mere fact that an account may be designated an officeholder account does not insulate it from scrutiny under the BERA or other applicable local law if the officeholder account is not used strictly for officeholder purposes or if some action taken with respect to the officeholder account implicates campaign contributions and expenditures or other applicable local laws.

ANALYSIS:

Sarah Reynoso, former secretary and staff counsel to the Fair Campaign Practices Commission (FCPC), issued an opinion to the FCPC dated December 2, 1991, a copy of which is attached, stating that the BERA's contribution limit does not apply to contributions made to an officeholder account. The opinion reasons that the BERA's contribution limit applies only to "contributions" as defined in the BERA, i.e., which are made directly or indirectly in support of or in opposition to the nomination or election of one or more candidates to elective office. (See Berkeley Municipal Code (BMC) § 2.12.100.) Contributions to a true officeholder account are not made for the purpose of nominating or electing a candidate to office, but rather for the use of an officeholder in carrying out the duties of his or her office. Therefore, the contribution limit of the BERA is inapplicable to officeholder accounts.<sup>1</sup> For similar reasons, the BERA does not

<sup>1</sup> However, the opinion also provided that contributions to officeholder accounts still had to be reported on campaign statements because the State Fair Political Practices Commission (FPPC) Regulations broadly defined contributions as any contribution for "political purposes." Since officeholder expenses are for political purposes, they must be reported to the State.



Barbara Gilbert

Re: Application of Berkeley Election Reform Act To Officeholder Accounts

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apply to true officeholder accounts.

The BERA requires the filing of statements to report the amounts received and expended in municipal elections. (See BMC §§ 2.12.015, 2.12.030 through 2.12.050) Specifically, a "campaign statement" required to be filed under the BERA is an itemized report which provides the information required by Sections 2.12.245 through 2.12.325 of the BERA. (BMC § 2.12.080.) Sections 2.12.245 through 2.12.325 govern the reporting of contributions and expenditures. "Contributions" and "expenditures" are defined by the BERA as any amounts received or expended, respectively, in aid of or in opposition to the nomination or election of one or more candidates to elective office. (See BMC §§ 2.12.100 and 2.12.130.) Contributions to or expenditures from a true officeholder account are not subject to the BERA's reporting requirements because they are made for the purpose of carrying out the duties of elective office, and not for the purpose of aiding or opposing the nomination or election of one or more candidates to elective office.<sup>2</sup> Therefore, the BERA does not apply to true officeholder accounts.

However, the fact that an account may be designated as an officeholder account will not shield it from scrutiny under the BERA if the officeholder account is, in fact, being used for the receipt of contributions or the making of expenditures in aid of the nomination or election of a candidate for local elective office. Nor will BERA requirements, such as the \$250 contribution limit or the prohibition against contributions from businesses to candidates, be held inapplicable if contributions made initially to an officeholder account are transferred subsequently to a campaign account. Where the actions taken with respect to an officeholder account implicate campaign contributions and expenditures in municipal elections, the officeholder account will be scrutinized under the BERA and other applicable local law.

Attachment

cc: Fair Campaign Practices Commission  
Sherry Kelly, City Clerk

City Attorney Opinion Index: ILE.1. and IILG.

CCM

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<sup>2</sup> Again, however, the State FPPC still requires the reporting of activity relating to an officeholder account. (See footnote 1.)

**NOTICE OF PUBLIC HEARING  
BERKELEY CITY COUNCIL**

**AMENDMENTS TO THE BERKELEY ELECTION REFORM ACT**

The Fair Campaign Practices Commission is proposing amendments to the Berkeley Election Reform Act related to the prohibition of officeholder accounts.

The hearing will be held on, February 4, 2020, at 4:00 p.m. in the School District Board Room, 1231 Addison Street.

A copy of the agenda material for this hearing will be available on the City’s website at [www.CityofBerkeley.info](http://www.CityofBerkeley.info) as of **January 30, 2020**.

For further information, please contact Samuel Harvey, Commission Secretary at 981-6998.

Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council are public record and will become part of the City’s electronic records, which are accessible through the City’s website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at 981-6900 or [clerk@cityofberkeley.info](mailto:clerk@cityofberkeley.info) for further information.

**Published:** January 24, 2020 – The Berkeley Voice  
Pursuant to Berkeley Municipal Code Section 2.12.051

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I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City’s website, on January 30, 2020.

Mark Numainville, City Clerk



Open Government Commission

ACTION CALENDAR
September 15, 2020

To: Honorable Mayor and Members of the City Council
 From: Open Government Commission
 Submitted by: Brad Smith, Chair, Open Government Commission
 Subject: Relinquishments and grants from Councilmembers' office budgets

RECOMMENDATION

Adopt a Resolution creating a temporary advisory committee consisting of three (3) members each of the City Council and the Open Government Commission ("OGC") to enable discussion between the Council and the OGC to make recommendations governing relinquishments and grants from Councilmembers' office budgets.

FISCAL IMPACT OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The issue of D-13 accounts (Council Budget Funds) being used for purposes other than office expenses has been raised at the OGC. While commission members agree that it is admirable to donate to organizations that serve the City, some members feel the practice of using office budget funds for this purpose and attaching individual Councilmembers' names to the donation may provide unfair advantage to an incumbent.

The two main concerns identified by some commissioners with the current practice are:

1. Councilmembers are able to initiate grants to organizations, at their discretion, which may raise their public profile.
2. Attaching the name of a Councilmember to a grant from the City of Berkeley may confer an advantage for the incumbent over would-be challengers.

The current practice was established in the early 2000's because councilmembers were granting public money to individuals and organizations, without approval of the Council.

This led to a concern about the potential for corruption and favoritism. The City Attorney established the existing system, though because the councilmembers' names are attached to the grants, some concern remains.

From recent discussion at OGC, commissioners are in general agreement that ending the practice of attaching the name of a councilmember to a grant will help to alleviate the main concerns: 1 & 2 above. At the OGC's April 23, 2020 meeting, commissioners unanimously approved forwarding a recommendation to Council to not include the name of an individual councilmember attached to a discretionary grant.

A review of the grants and relinquishment of funds from city council members for 2019 amounts to \$30,130. These are funds that could have been used for office, travel (on city business) and other expenses.

Commission members have discussed recommending to Council for consideration options to address the issue:

1. An amendment requiring that all disbursements from the General Fund be designated as coming from the Council as a whole, without individual names attached to the donations.
2. Create another account specifically for discretionary grants, without reducing the D-13 account budget, to allow Councilmembers to continue recommending a grant or donation to a particular organization, without an individual name attached to the donation.
3. Eliminate discretionary grants.

BACKGROUND

On May 21, 2020, the OGC directed four of its members to draft a proposed recommendation to Council related to relinquishment of Councilmembers' office budget funds.

On June 18, 2020, the OGC voted to present this recommendation to Council.

ENVIRONMENTAL SUSTAINABILITY

Not applicable.

RATIONALE FOR RECOMMENDATION

An advisory committee will enable collaborative discussion between the Council and the OGC to make recommendations governing relinquishments and grants from Councilmembers' office budgets.

ALTERNATIVE ACTIONS CONSIDERED

The OGC has discussed recommending removal of councilmember names from office budget relinquishments, banning relinquishments for grants to organizations, and

creating and funding a separate account for donations to organizations that Council would control, but which would not have councilmember names attached to it.

CITY MANAGER

The City Manager takes no position on the content and recommendations of the Commission's Report.

CONTACT PERSON

Brad Smith, Chair, Open Government Commission

Attachments:

1: Resolution

RESOLUTION NO. –N.S.

RESOLUTION CREATING A TEMPORARY JOINT ADVISORY COMMITTEE TO
REVIEW COUNCIL OFFICE BUDGET RELINQUISHMENTS AND GRANTS

WHEREAS, pursuant to Berkeley Municipal Code § 2.06.190.A.2, the Open Government Commission (“OGC” or “Commission”) may “advise the City Council as to any . . . action or policy that it deems advisable to enhance open and effective government in Berkeley”; and

WHEREAS, while Commission members agree that it is admirable to donate to organizations that serve the City, some members feel the practice of using office budget funds for this purpose and attaching individual Councilmembers’ names to the donation may raise the public profile of a Councilmember and provide unfair advantage to an incumbent; and

WHEREAS, the Commission has expressed a desire to work collaboratively with the City Council to consider recommendations governing grants made from relinquishments of funds from Councilmembers’ office budgets.

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Berkeley that a temporary joint advisory committee consisting of three (3) members of the City Council and three (3) members of the Open Government Commission is hereby created to enable discussion between the Council and the OGC to make recommendations governing relinquishments and grants from Councilmembers’ office budgets.

BE IT FURTHER RESOLVED that the City Council and the Open Government Commission each shall, as soon as practicable and by majority vote, appoint three members to the committee created by this resolution.

BE IT FUTHER RESOLVED that the committee created by this resolution shall hold its first meeting within 60 days of passage of this resolution and at that first meeting shall determine the need for any subsequent meetings and shall adopt a schedule for any such subsequent meetings.